Congressional Record

PROCEEDINGS AND DEBATES OF THE SEVENTIETH CONGRESS
SECOND SESSION

SENATE

SATURDAY, *January 5, 1929*

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

O God, whose Spirit mingles with our own as sunshine in the air, help us in spirit and in truth to worship only Thee.

Forgive in us whatever is amiss, that in the duties of this day we may find ourselves free from the dusty cares of life, eager to press with winged feet through paths of high endeavor to the goal set by Thy love. Lead us out of darkness into dawn, out of the less to the large, and use us for Thine own purposes, just as Thou wilt and when and where. Through Jesus Christ our Lord. Amen.

NAMING A PRESIDING OFFICER

The Chief Clerk read the following communication:

UNITED STATES SENATE,
PRESIDENT PRO TEMPORE,
Washington, D. C., January 5, 1929.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. CHARLES L. MCNARY, a Senator from the State of Oregon, to perform the duties of the Chair this legislative day.

GEORGE H. MOSES,
President Pro Tempore.

Mr. MCNARY took the chair as Presiding Officer and directed that the Journal be read.

THE JOURNAL

The Chief Clerk proceeded to read the Journal of the proceedings of the legislative day of Thursday last when, on request of Mr. CURTIS, and by unanimous consent, the further reading was dispensed with and the Journal was approved.

SETTLEMENT OF DISTRICT OF COLUMBIA CLAIMS

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 3581) authorizing the Commissioners of the District of Columbia to settle claims and suits against the District of Columbia.

Mr. CAPPER. I move that the Senate disagree to the amendments made by the House and request a conference on the disagreeing votes of the two Houses, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. CAPPER, Mr. BLAINE, and Mr. KING conferees on the part of the Senate.

PETITIONS

Mr. BURTON presented petitions and papers in the nature of petitions of members of Muskingum College, of New Concord; members of the Young Woman's Christian Association of Springfield; members of the Board of Federation of Women's Clubs, of Zanesville; students of the Lincoln High School, of Canton; members of the Monthly Meeting of Friends, of Salem; members of the Men's Bible Class of the Van Buren St. Methodist Episcopal Church, of Dayton; students of Hiram College, of Hiram, and sundry citizens, all in the State of Ohio, praying for the prompt ratification of the so-called Kellogg peace pact for the renunciation of war, without qualification or reservation, which were ordered to lie on the table.

Mr. GREENE presented a petition of sundry citizens of Bennington, Vt., praying for the prompt ratification of the so-called Kellogg multilateral treaty for the renunciation of war, which was ordered to lie on the table.

Mr. EDGE presented a communication from W. F. Bigelow, editor of Good Housekeeping, favoring the prompt ratification of the so-called Kellogg peace pact, which was ordered to lie on the table and to be printed in the RECORD, as follows:

GOOD HOUSEKEEPING,
New York, N. Y., January 2, 1929.

Senator WALTER E. EDGE,
Washington, D. C.

MY DEAR SENATOR EDGE: At the New Year's Eve meeting of the Monday Club, an organization composed of leading citizens of Roselle-Roselle Park, N. J., a resolution indorsing the Kellogg pact and praying for its speedy ratification by the Senate was adopted, and I was instructed to acquaint you and Senator EDWARDS with our action. We realize that our voice is but a small one, but are confident that there are enough small voices throughout the Nation to constitute a mighty chorus. We believe that the people want America put on record as desiring peace.

Sincerely yours,

W. F. BIGELOW.

SIMPLIFICATION OF NATURALIZATION PROCESS

Mr. WALSH of Massachusetts. I present a communication in the nature of a petition from the Chamber of Commerce of Quincy, Mass., which I ask to have printed in the RECORD and referred to the Committee on Immigration. It requests the passage of Federal legislation, with which I am in accord, to simplify and reduce the expenses of the naturalization process.

There being no objection, the communication was referred to the Committee on Immigration and ordered to be printed in the RECORD, as follows:

QUINCY CHAMBER OF COMMERCE,
Quincy, Mass., January 4, 1929.

Senator DAVID I. WALSH,
Washington, D. C.

MY DEAR SENATOR WALSH: At a meeting of the board of directors of the Quincy Chamber of Commerce, held on December 6, 1928, it was voted to petition Federal legislators to simplify and reduce the expenses of the naturalization process.

The Quincy Chamber of Commerce hopes to have the aid of the legislators in reducing the number of times which an alien must bring witnesses to State court tribunals during the naturalization. Under the present system an applicant for United States citizenship must bring two witnesses before superior court officials on three separate occasions, whereas if the alien uses the Federal court in Boston as the machine of naturalization he is required to produce his witnesses on but two occasions.

The differences in the workings of the State and Federal courts are explained in a letter written to the chamber of commerce by Robert B. Worthington, superior court clerk, which says:

"The Federal Constitution provides that 'the Congress shall have power * * * to establish a uniform rule of naturalization,' and it also provides that 'this Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.' In matters of naturalization the United States court and the Massachusetts court exercise concurrent jurisdiction under the Federal law.

"Naturalization of aliens is now effected under an act of Congress passed June 29, 1906, entitled 'An act to provide for a uniform rule for the naturalization of aliens throughout the United States and establishing the Bureau of Naturalization, a title which apparently specifically recognizes the constitutional authority given the Congress to establish a uniform rule of naturalization.' Under this act of 1906, aliens residing in Massachusetts may be naturalized either in the district court of the United States or in the Massachusetts Superior Court. An alien can be admitted only in accordance with the specific provisions of this act. Every petition for naturalization must, when filed, be verified by affidavits of two credible witnesses. All hearings on petitions for naturalization can be had only on stated days fixed by the

court and not until at least 90 days have elapsed after the date of the filing of petition.

"Under an act of Congress passed June 8, 1926, provision was made whereby in the United States District Court (but not in State courts) an officer of the Bureau of Naturalization, designated by the judge, is authorized to make a report to the court as to the sufficiency of the witnesses to petitions, and if the examiner's report is approved by the judge the witnesses are not required to appear on any other occasion.

"Under the 1926 amendment two witnesses to each petition in the superior court, often on three separate occasions and invariably on two separate occasions, must personally appear before the court or before representatives of the Government.

"First. At the time of filing the petition the petitioner and his witnesses are required to be present and affix their signatures to the petition and make oath to their statements before the clerk.

"Second. At some time before the final hearing of the petition the witnesses are required to be examined by the representative of the Bureau of Naturalization.

"Third. On the date of the final hearing the witness must appear in court and be examined in open court in the presence of the court.

"On petitions filed in the Federal court only one appearance of witnesses may be required.

"It would seem that a question might properly be raised as to the constitutionality of the act of 1926, which does not appear 'to provide a uniform rule of naturalization.' If this act could be amended by inserting therein words which would extend the application of the provisions of the act to include all courts authorized to exercise naturalization jurisdiction the principle of uniformity in the law under the Constitution would be observed.

"The next stated day for hearing petitions for naturalization at Quincy will be on Monday, February 25, 1929. Petitions for naturalization were received at Quincy on Thursday, November 22, and Friday, November 23, 1928. Through the cooperation of the office of the district director of naturalization at Boston, who is the representative of the Bureau of Naturalization in the Massachusetts district of the Federal court, examiners were present when the petitions were received. By this arrangement it will not be necessary for the witnesses to appear again until the date of the final hearing."

It is the hope of starting a movement which may ultimately result in the amending of this act that animates the Quincy Chamber of Commerce in appealing to Senators and Representative from this district in Washington.

Respectfully yours,

G. A. WARDWELL, *Secretary.*

DALLINGER AMENDMENT TO CRUISER BILL

Mr. WALSH of Massachusetts. Mr. President, I have recently been in communication with the Navy Department with respect to the effect of the Dallinger amendment as passed by the House of Representatives to the bill H. R. 11526—cruiser bill, so-called—and at my request the Navy Department have prepared a statement as to the effect of the Dallinger amendment as they interpret it; also the effect of the Dallinger amendment as amended by the Senate Committee on Naval Affairs and reported to the Senate in the bill H. R. 11526—a compromise agreed to by the Naval Affairs Committee—and also the effect of the bill H. R. 11526 without either the Dallinger amendment or the amendment made to the Dallinger amendment by the Senate Committee on Naval Affairs.

I request that this statement be printed in the CONGRESSIONAL RECORD to be considered in connection with the debate upon the cruiser bill, H. R. 11526.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

H. R. 11526—DALLINGER AMENDMENT

EFFECT OF DALLINGER AMENDMENT AS PASSED BY THE HOUSE

As passed by the House, the Dallinger amendment to the bill H. R. 11526 provided as follows:

"And provided further, That the first and each succeeding alternate cruiser upon which work is undertaken, together with the main engines, armor, and armament for such light cruisers, the construction and manufacture of which is authorized by this act, shall be constructed or manufactured in the Government navy yards, naval gun factories, naval ordnance plants, or arsenals of the United States."

The effect of this amendment as it passed the House would be to increase the cost of construction of the cruisers materially. It would be impossible for the Government to manufacture all the equipment that goes into the construction of cruisers except at an inordinate expense. The manufacture of certain material and equipment by the Government would involve infringement of patents. Certain fire-control equipment, electrical equipment, gun forgings, etc., can not be manufactured in navy yards, or other Government industrial plants, not only because of lack of equipment to do that class of work but because of the lack of buildings, trained men, organization, and experience. If the protective plating of the cruisers should be construed as armor to be built in Government yards, it would require opening the armor plant at Charleston, W. Va., at considerable expense.

All the navy yards are not equipped to build cruisers. It will require additional expenditures to place some of the navy yards in a position to build the eight cruisers, not only from a material standpoint, such as rebuilding ways, purchasing new equipment, but also from the point of view of organization and the dearth of skilled mechanics and necessary technical men in the vicinity of some of the navy yards.

EFFECT OF THE DALLINGER AMENDMENT AS AMENDED BY THE SENATE

The Dallinger amendment as amended by the Senate in the bill H. R. 11526 provides as follows:

"And provided further, That the first and each succeeding alternate cruiser upon which work is undertaken, together with the main engines, armor, and armament for such light cruisers, the construction and manufacture of which is authorized by this act, shall be constructed or manufactured in the Government navy yards, naval gun factories, naval ordnance plants, or arsenals of the United States, except such material or parts thereof as the Secretary of the Navy may find procurable by contract or purchase at an appreciable saving in cost to the Government."

The effect of the Senate amendment is to make it possible for the Government navy yards to build the eight cruisers required to be built thereat. With the Senate amendment the Secretary of the Navy has some discretionary powers in the procurement of materials and/or parts of cruisers by contract or purchase when an appreciable saving in cost to the Government would thereby result.

Even with the modified language of the Senate it will be necessary to expend considerable sums in preparing some of the navy yards for the construction of these cruisers.

EFFECT OF BILL H. R. 11526 WITHOUT DALLINGER AMENDMENT

If the bill H. R. 11526 is passed without the Dallinger amendment, the Navy Department would be governed by the general law governing the awards of contracts. If the language usually contained in the naval appropriation acts is continued, the Government would be fully protected.

For example, the naval appropriation act of May 21, 1928, provides as follows:

"* * * and that no part of the moneys herein appropriated for the Naval Establishment or herein made available therefor shall be used or expended under contracts hereafter made for the repair, purchase, or acquirement, by or from any private contractor, of any naval vessel, machinery, article or articles that at the time of the proposed repair, purchase, or acquirement can be repaired, manufactured, or produced in each or any of the Government navy yards or arsenals of the United States, when time and facilities permit, and when, in the judgment of the Secretary of the Navy, such repair, purchase, acquirement, or production would not involve an appreciable increase in cost to the Government."

The effect of the bill H. R. 11526 without the Dallinger amendment woud be to give the Secretary of the Navy a wider discretion in the building of the cruisers. He would be governed by the foregoing language contained in the annual appropriation acts and would be required to construct the cruisers in Government navy yards in preference to private shipyards, unless an appreciable increase in cost would result.

By giving the Secretary of the Navy a wider discretion more competition will result between the navy yards and the private shipyards. A material saving in the cost of the construction of these cruisers will result and in time in which they can be completed.

OLD-AGE PENSION SYSTEMS

Mr. WALSH of Massachusetts. Mr. President, the Committee on Education and Labor have been holding hearings with respect to the unemployment problem. Those hearings have been held under a Senate resolution submitted by the Senator from Wisconsin [Mr. LA FOLLETTE]. One of the problems with which the committee have been called upon to deal in connection with this investigation is that relating to the increasing tendency in industrial and commercial life to discharge employees on reaching middle life or early old age, and the extent to which this movement in industrial and commercial life has gone in urging the necessity of age pension systems.

The State of Wisconsin has two pension acts, one of them known as the "mothers' pension act" and the other known as the "old age pension act." The latter act has been in operation over three years, but only 6 counties out of 72 have adopted it. I have a statement of the operation of the old age pension law in Wisconsin from the county judge of La Crosse, Wis., who has administered the law, and I request that the statement be printed in the CONGRESSIONAL RECORD and referred to the Committee on Education and Labor.

There being no objection, the statement was ordered to be printed in the RECORD and referred to the Committee on Education and Labor, as follows:

To Senator WALSH:

The following constitutes a synopsis of our pension-aid systems in Wisconsin:

We have two pension acts, one is for the aid of dependent children in the home and known as the mothers' pension act. This is a State law making it compulsory for the counties to provide for it. One-third of the cost is borne by the State and two-thirds by the county. It provides for a pension to mothers who have one or more children under 16 years of age and who are dependent either on account of death, incapacity, or desertion of the father, and in case of the death of both father and mother a pension can be given to a grandparent or guardian who may have the custody and care of the children.

The maximum pension that can be given for this purpose is not to exceed $15 for the first child and $10 each for the other children per month. This pension aid is administered by the county judge or juvenile judge in each county, and he appoints to assist him in the matter of management a child-welfare board consisting of three members, who serve without pay and receive nothing except actual expenses. Other social workers, such as probation officers, are called upon for assistance. In this county, La Crosse County, our mothers' pension system is primarily in charge of our probation officer, who makes a budget of each family's income and necessities. Investigations are made about every three months, and each mother or guardian also under the mothers' pension system must make a written report each month of their income and expenditures, and unless this is done their monthly check is not sent out.

The fact is that the Legislature of Wisconsin has not lived up to the provision of the law which requires two-thirds of the cost to be paid by the State and one-third by the counties. The counties have to pay practically all.

This system of mothers' pension is very satisfactory, and I am sure that there would be little sentiment for its repeal. Of course, abuses will creep in, but that depends largely upon the supervision. Of course, if a county judge is given supervision of granting mothers' pensions and has not sufficient help to have investigations made, naturally some people will be getting assistance who should not have it.

Our other system of pensions in this State is the old-age pension. Perhaps it is this system you are more concerned about. I am inclosing herewith a printed circular which gives a synopsis of our old age pension act. This is also a State act, but it is optional with the counties to go under it or not. While the law has been in operation over three years, only 6 counties out of 72 have adopted it. La Crosse County is one of those counties. Only one county, I believe, has discarded it after adopting it. It is within the power of the county board to adopt the system and then abandon it later if it sees fit. Under this law one-third of the cost is also paid by the State and two-thirds by the county. A county, however, can charge the tax back to the taxing unit in which the pensioner resides. The State under the old-age pension system has caused sufficient appropriations to be made to meet its share.

The pension is really designated to take care of indigent people who are over 70 years of age and, as the law provides, whose income does not exceed $1 a day. The pension itself can not exceed $30 a month, and in many instances only half of that amount is given. In fact, the average in this county of our old-age pension was slightly in advance of $17 a month last year. You can readily see that the recipients of this pension are people who are practically down and out financially and who have no earning power to speak of. Many of them would have to go to the county poorhouse, which is maintained by the counties in this State, if they did not receive a pension. A person can, however, be eligible to pension who has property up to $3,000. The obvious reason for this is that oftentimes an old couple may own their home but have no income to live upon. If there are children, and especially sons, we make it a point to have them do something if possible to aid their father or mother. Under our law a son is liable for his parents' support, but as a matter of practice actions to enforce a son or sons to support their aged parents are very rare. However, the initiation of the old-age pension has emphasized the responsibility, and in many cases where an application is made, instead of granting it we take steps to have the old people supported by sons and daughters.

The same supervision applies to old-age pensions as it does to mothers' pension, but the investigation is made principally at the time the pension is granted. This initial investigation is the principal thing, because conditions do not change much with the applicant for old-age pension, while there may be a decided change, of course, with the young mother, for instance, who receives a mother's pension. Provision is made in the old-age pension act for a lien upon the real estate, if any, after the death of the pensioner. This is a very satisfactory provision, and while we have not collected any great amount that way the children who are responsible for the support of parents will oftentimes do more when they know that a lien would be enforced against the home of their parents in case of their death.

In my observation, the administration of old-age pension in this county has been highly successful. While it does not give a large amount to the old people, yet it comes to them monthly in the form of a check, and they are much more independent than they would be if the relief came in another way.

We have one provision of our law which provides full citizenship. This has worked to disadvantage, because we have many old people of foreign birth who did not take out their second papers. They were allowed to vote formerly by having their first papers, and they did not go to the trouble of taking their final papers. Inasmuch as our law provides full citizenship for 15 years, the case of a foreigner without second papers, although he may have been a resident of the State and county for 50 years, places him in a position where he is forever barred, because to wait 15 years after he applies practically bars him.

As I view it, the proper administration of the old-age pension ought to practically abolish the county almshouse, although it would still be necessary for counties to maintain some institution in the nature of a county hospital for the care and nursing of these indigents who are not able to care for themselves in their own homes.

A system similar to our mothers' pension is in operation in several States. As to the old-age pension, I believe some other States have adopted old age pension acts, but I am not familiar with their provisions.

WISCONSIN'S OLD-AGE PENSION SYSTEM—WHAT TO KNOW IN APPLYING FOR ASSISTANCE UNDER THE WISCONSIN OLD AGE PENSION LAW

(Chapter 121, laws 1925)

I. Under the provisions of chapter 121, laws 1925, any county is authorized by a two-thirds vote of the members elected to its county board to establish a system of old-age pensions, and after operating under such system for one year or more may abandon such system.

II. Who are entitled to old-age pensions:

1. Any persons 70 years of age or over residing in a county which maintains a system of old-age pensions who qualify under the following provisions:

(a) Who have been citizens of the United States for at least 15 years.

(b) Who have been continuous residents of the State of Wisconsin for at least 15 years immediately preceding the date of application (continuous residence is not deemed interrupted if the total period of absence from the State does not exceed 3 years); or

(c) Who have resided in Wisconsin a total of 40 years, at least 5 of which have immediately preceded the application (absence in the service of the State or of the United States shall not be deemed to interrupt residence in the State or county if a domicile be not acquired outside of the State or county).

(d) Whose income from all sources does not exceed $1 per day.

(e) Whose property valuation does not exceed $3,000. (The property of both husband and wife when living together is figured as if it were that of one person).

III. Who are not entitled to old-age pension:

1. Persons under 70 years of age, or those 70 years of age but who are disqualified by the following provisions:

(a) Who have not been citizens of the United States for at least 15 years.

(b) Who have not resided continuously in Wisconsin as required in sections (b) and (c) above.

(c) Persons who at the date of application are inmates of either prisons, jails, workhouses, infirmaries, insane asylums, or any other public correctional institutions.

(d) Persons who have been imprisoned for a felony during the period of 10 years immediately preceding the date of application.

(e) Persons who for 6 months or more during the 15 years preceding the date of application have without just cause failed to support their wives and their children under 15 years of age.

(f) Persons who within the year preceding the application for pension have been habitual tramps or beggars.

(g) Persons who have children or other persons responsible for their support under the laws of the State and able to do so. (Under the laws of Wisconsin the husband and wife, the father, the children, or the mother, respectively, of a poor person chargeable to the public, if of sufficient ability, are required to relieve and maintain such poor person, as determined by the court.)

(h) While such person is an inmate of and receives the necessities of life from any charitable institution maintained by the State or any of the political subdivisions of the State, or of a private, charitable, benevolent, or fraternal institution or home for the aged.

(i) Persons whose income from all sources exceeds $1 per day.

(j) Persons who have property valued at more than $3,000, including the properties of both husband and wife when living together.

(k) Persons who have deprived themselves directly or indirectly of any property for the purpose of qualifying for old-age pension.

IV. How to apply for old-age pension:

1. Applicants who, in view of the above qualifications, feel certain that they are qualified for pension should procure two application blanks for this purpose from the county judge at the courthouse in the county in which they reside.

2. Both blanks should be properly filled out, giving all the information required to the best of their knowledge, which information shall be sworn to or affirmed by the applicant and returned to the county judge. (The attention of applicants is called to the fact that no legal advice is necessary in making out the application. If they are unable to write they may ask some one else to do it for them. There is no necessity for the payment of a lawyer's fee in filling out an application for old-age pension.)

3. Upon receipt of application the county judge shall make or cause such investigations to be made as he may deem necessary, and shall decide finally upon the application and the amount of pension to be granted.

4. The applicant will be notified of the approval or disapproval of his or her application.

5. An applicant whose application for pension has been rejected may not reapply for pension until the expiration of 12 months from the date of previous application.

V. When pensions may be canceled:

1. If on investigation by county judge it is found that pension has been improperly obtained.

2. If a pensioner is convicted of any misdemeanor, felony, or other offense punishable by imprisonment for one month or more.

3. If it appears at any time that the pensioner's circumstances have changed.

VI. Miscellaneous provisions:

1. During the continuance of the pension no pensioner shall receive any other relief from the State or from any political subdivision thereof except for medical and surgical assistance.

2. All pensions shall be exempt from any tax levied by the State or by any subdivision thereof and exempt from levy and sale, garnishment, attachment, or any other process whatsoever.

[NOTE.—Additional supply of this form may be secured from the State Board of Control of Wisconsin, Madison, Wis.]

REPORTS OF COMMITTEES

Mr. FLETCHER, from the Committee on Military Affairs, to which was referred the bill (H. R. 4935) to authorize the appointment of First Lieut. Clarence E. Burt, retired, to the grade of captain, retired, in the United States Army, reported it without amendment and submitted a report (No. 1379) thereon.

Mr. BROOKHART, from the Committee on Military Affairs, to which was referred the bill (H. R. 8974) authorizing the President to order Oren W. Rynearson before a retiring board for a hearing of his case, and upon the findings of such board determine whether or not he be placed on the retired list with the rank and pay held by him at the time of his resignation, reported it without amendment and submitted a report (No. 1378) thereon.

Mr. REED of Pennsylvania, from the Committee on Military Affairs, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

A bill (S. 4644) to authorize an appropriation for completing the new cadet mess hall, United States Military Academy (Rept. No. 1380); and

A bill (S. 4217) to authorize the removal of the Aqueduct Bridge, crossing the Potomac River from Georgetown, D. C., to Rosslyn, Va. (Rept. No. 1381).

Mr. DALE, from the Committee on Commerce, to which was referred the bill (S. 4915) granting the consent of Congress to the South Park commissioners and the commissioners of Lincoln Park, separately or jointly, their successors and assigns, to construct, maintain, and operate a bridge across that portion of Lake Michigan lying opposite the entrance to Chicago River, Ill., and granting the consent of Congress to the commissioners of Lincoln Park, their successors and assigns, to construct, maintain, and operate a bridge across the Michigan Canal, otherwise known as the Ogden Slip, in the city of Chicago, Ill., reported it with an amendment to the title and submitted a report (No. 1382) thereon.

He also, from the same committee, to which were referred the following bills, reported them severally with amendments and submitted reports thereon:

A bill (S. 4861) authorizing the Brownville Bridge Co., its successors and assigns, to construct, maintain, and operate a bridge across the Missouri River at or near Brownville, Nebr. (Rept. No. 1383);

A bill (S. 4957) granting the consent of Congress to the Danville & Western Railroad Co. to reconstruct and to maintain and operate the existing railroad bridge across the Dan River in Pittsylvania County, Va. (Rept. No. 1384);

A bill (S. 5038) to extend the times for commencing and completing the construction of a bridge across the Mississippi River at or near Baton Rouge, La. (Rept. No. 1385);

A bill (S. 5039) to extend the times for commencing and completing the construction of a bridge across the Wabash River at Mount Carmel, Ill. (Rept. No. 1386); and

A bill (S. 5059) granting the consent of Congress to the Chicago, South Shore & South Bend Railroad to construct, maintain, and operate a bridge across the Grand Calumet River at East Chicago, Ind. (Rept. No. 1387).

Mr. DALE also, from the Committee on Commerce, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (S. 4976) granting the consent of Congress to the counties of Lawrence and Randolph, State of Arkansas, to construct, maintain, and operate a bridge across the Spring River at or near the town of Black Rock, Ark. (Rept. No. 1388);

A bill (S. 4977) granting the consent of Congress to the counties of Lawrence and Randolph, State of Arkansas, to construct, maintain, and operate a bridge across the Spring River at or near Imboden, Ark. (Rept. No. 1389);

A bill (H. R. 13503) granting the consent of Congress to the State of Minnesota to construct, maintain, and operate a free highway bridge across the Mississippi River at or near Hastings, Minn. (Rept. No. 1390);

A bill (H. R. 13540) granting the consent of Congress to the State Highway Commission of Arkansas to construct, maintain, and operate a bridge across the Ouachita River at a point between the mouth of Saline River and the Louisiana and Arkansas line (Rept. No. 1391); and

A bill (H. R. 13848) to legalize a bridge across the Potomac River at or near Paw Paw, W. Va. (Rept. No. 1392).

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. HARRIS:

A bill (S. 5197) for the relief of J. H. B. Wilder; to the Committee on Claims.

By Mr. STECK:

A bill (S. 5198) granting an increase of pension to John Curran;

A bill (S. 5199) granting an increase of pension to Lydia Keatley; and

A bill (S. 5200) granting an increase of pension to Mariah E. Crom; to the Committee on Pensions.

By Mr. ROBINSON of Arkansas:

A bill (S. 5201) to authorize an appropriation for the relief of the States of Missouri, Mississippi, Louisiana, and Arkansas on account of roads and bridges damaged or destroyed by floods of 1927; to the Committee on Agriculture and Forestry.

By Mr. FLETCHER:

A bill (S. 5202) to provide for the establishment of a branch home of the National Home for Disabled Volunteer Soldiers in the State of Florida; to the Committee on Military Affairs.

By Mr. BROOKHART:

A bill (S. 5203) to regulate hours of employment in the District of Columbia; to the Committee on the District of Columbia.

By Mr. BURTON:

A bill (S. 5204) for the relief of Edwin R. Samsey; to the Committee on Military Affairs.

By Mr. DENEEN:

A bill (S. 5205) for the relief of Nellie McMullen; and

A bill (S. 5206) for the relief of James McGourty; to the Committee on Claims:

By Mr. GOFF:

A bill (S. 5207) granting an increase of pension to Annie A. Riggs (with accompanying papers); to the Committee on Pensions.

By Mr. NYE:

A bill (S. 5208) for the relief of Arthur A. Stone; to the Committee on Claims.

A bill (S. 5209) to correct the military record of George W. Posey; to the Committee on Military Affairs.

By Mr. THOMAS of Idaho:

A bill (S. 5210) for the relief of Ira W. Moore; to the Committee on Claims.

A bill (S. 5211) providing for the conveyance of land embraced in the Boise Barracks, Boise, Idaho, to the United States Veterans' Bureau and to the State of Idaho; to the Committee on Military Affairs.

By Mr. NEELY:

A bill (S. 5212) granting a pension to Fred Tate;

A bill (S. 5213) granting an increase of pension to James W. Ashby; and

A bill (S. 5214) granting an increase of pension to Imogene West; to the Committee on Pensions.

By Mr. MOSES:

A bill (S. 5215) granting an increase of pension to Eunice Gilkey (with accompanying papers);

A bill (S. 5216) granting an increase of pension to Elizabeth S. Barker (with accompanying papers); and

A bill (S. 5217) granting an increase of pension to Emilie M. Boyle (with an accompanying paper); to the Committee on Pensions.

By Mr. BURTON:

A bill (S. 5219) granting consent of Congress to the Cedar Point Bridge Co., a corporation organized under the laws of Ohio, of Sandusky, Erie County, Ohio, to construct a bridge across Sandusky Bay in the city of Sandusky, Erie County, Ohio; to the Committee on Commerce.

By Mr. SCHALL:

A bill (S. 5220) for the relief of Donald Alexander Peterson; to the Committee on Naval Affairs.

By Mr. BARKLEY:

A bill (S. 5221) for the relief of Cary Dawson; to the Committee on Claims.

By Mr. HEFLIN:

A bill (S. 5222) amending an act to amend the act entitled "An act for the retirement of employees in the classified civil service, and for other purposes," approved May 22, 1920, and acts in amendment thereof (with accompanying papers); to the Committee on Civil Service.

MUSCLE SHOALS

Mr. McKELLAR introduced a bill (S. 5218) authorizing the Secretary of War to build transmission lines and dispose of power generated at Muscle Shoals, which was read twice by its title.

Mr. McKELLAR. Mr. President, I desire to make a brief explanation of the bill which I have just introduced. It is a bill authorizing the Secretary of War to operate Muscle Shoals as a temporary proposition. I find that the water power is going to waste absolutely at Muscle Shoals. There is but one purchaser of the power, namely, the Alabama Power Co. The officer in charge of leasing the power has stated that the Alabama Power Co. has recently completed two other hydroelectric plants, and that it does not need the power at this time, and is only buying a very small proportion of the power generated at Muscle Shoals.

It will be remembered that the Senate and the House passed a bill at the last session providing for the sale of power under certain circumstances, and providing further that the board, which was given authority over the power there, should lease it to States and municipalities within transmission distance if it were possible to do so. It also authorized the board to build transmission lines within reasonable bounds so that it might have more than one bidder for the current that was generated. It provided that if States or counties or municipalities did not want the power, then the board should lease it to private individuals for limited periods of not more than 10 years.

I have taken those provisions of the act which we passed at the first session of this Congress, there being only four sections, and incorporated them in the bill which I have just introduced, which provides for the use of the power by the Government. I think that we ought by all means to reenact that portion of the other bill, the President having vetoed the bill for other reasons. All of the objectionable features are omitted from the bill which I have just introduced. I have put into the bill simply the provisions of the other bill which was vetoed concerning the temporary disposition of surplus power. I have substituted the words "the Secretary of War" for the words "the board," and have introduced the bill in exactly the same language in which it was passed by the Senate and the House, with the exception that I except from the authority of the Secretary of War such power as may be directed by the Congress to be used for agricultural purposes.

Mr. NORRIS. Mr. President, I would like to say in connection with the subject about which the Senator from Tennessee has been speaking that the bill which we passed at the last session of the Congress, providing for taking care of the Muscle Shoals proposition, was not vetoed by the President. We adjourned while the President had the bill in his possession prior to the expiration of the 10-day period within which he might veto it. There is a very serious constitutional question involved as to the legal effect of the action taken by the President. Identically the same question is involved in relation to another bill which met the same fate exactly, having to do with the Okanogan Indians in the State of Washington. That bill is now pending upon an application for a writ of certiorari in the Supreme Court to have the Supreme Court pass on the question of whether or not the bill became a law or whether the action of the President resulted in what is ordinarily known as a pocket veto.

I do not desire to discuss the legal phases of the question now, although I have with some care looked up the question. If the court acts favorably upon the application for the writ of certiorari, which it seems to me it probably will, because there is a very important constitutional question involved, the Okanogan Indians will then be permitted to file the case, and it will come up in the regular way and be heard by the Supreme Court. If the Supreme Court holds that that bill has become a law, then the Muscle Shoals bill, passed at the last session of Congress, is likewise a law.

It seems to me that at the present session of Congress, with that question unsettled and this being the short session, which must expire on the 4th of March, it will probably be impossible to take up a new proposal of that importance and get it through both Houses of Congress, but that we ought to await action by the Supreme Court on the question. In fact, if we did make an attempt to pass another Muscle Shoals bill during the short session, we would probably find it impossible of accomplishment on account of the crowded condition of the calendar and the short time that is left for us to get a bill passed through both Houses and presented to the President.

It has seemed to me, therefore, that we ought to wait at least until the Supreme Court shall have acted upon that question. If the court shall hold the bill to be a law, no action on the part of either branch of Congress will, of course, be necessary.

Mr. McKELLAR. Mr. President, I realize that what the Senator from Nebraska has just stated is true, but at the same time it seems to me such a grievous waste merely to permit that water to flow over the dam without any return whatsoever that I have selected the Senator's own bill and have merely changed the wording and provided that the Secretary of War shall proceed with that particular phase of it and prevent this great loss to the Government and to the people.

Mr. NORRIS. I agree with the Senator as to that; but, as I understand, no law would be necessary for the Secretary of War, for instance, to permit the town of Muscle Shoals to get power from the dam. I do not understand why that has not been done.

Mr. McKELLAR. Neither do I, but it has not been done.

Mr. NORRIS. No; and I regret that situation just as much as does the Senator from Tennessee.

Mr. McKELLAR. I am sure the Senator does.

Mr. NORRIS. But it would be useless for Congress to pass a bill similar to the one we previously passed with the legal effect of the other action being still undecided even if we could do so.

Mr. McKELLAR. I should think that the President could proceed under the proposed authorization to lease the surplus power exactly as provided for in the Senator's bill, which was passed, and of which there was a so-called pocket veto; but I am not passing upon that.

Mr. NORRIS. The bill which has been introduced by the Senator from Tennessee, as I understand his statement, is an exact copy, with the necessary changes to apply to present conditions, of the bill which we previously passed?

Mr. McKELLAR. Oh, no; the bill I have introduced is not a copy of the Senator's entire bill, but merely a copy of those particular provisions which relate to the sale of surplus power and giving the Government authority to aid in the building of transmission lines for the use of that surplus power.

Mr. NORRIS. Is the Senator's bill a permanent one or, if it shall be passed, would it apply only until the pending question in dispute may be determined?

Mr. McKELLAR. On the face of the bill, it is permanent.

Mr. NORRIS. Does not the Senator think that with the other question pending and undecided, as I have stated, if we shall enact any legislation it ought to be only of a temporary nature, giving authority until the question in dispute shall have been settled or until Congress can finally dispose of it? I should have no objection to that.

Mr. McKELLAR. Perhaps that suggestion is a very wise one, and I should be very happy to accept it.

I merely feel this way about it: Under the present conditions the power at Muscle Shoals is being used really for the benefit of no one in the world except the Alabama Power Co. I do not think that company ought to be permitted longer to bottle up that great enterprise. I think that power ought to be used for all the people and not simply for the benefit of the Alabama Power Co., as is the situation now. For that reason I should be very happy to accept any suggestion about the temporary character of this proposed law, so that the administration may go on and utilize presently all the surplus power that is being generated or can be generated at Muscle Shoals.

Mr. NORRIS. Mr. President, I should like to say to the Senator from Tennessee that I do not believe there is disagreement between us as to what we would like done.

Mr. McKELLAR. I do not think so.

Mr. NORRIS. I am not satisfied any more than is the Senator with present conditions at Muscle Shoals, although it must be said in defense of the action of the Secretary of War in not providing for a better disposition of the power than, under existing conditions, he has not any authority to make a lease or contract that would extend for a sufficient length of time to enable him to get a real good bid for the property. So he is handicapped.

Mr. McKELLAR. I agree with the Senator from Nebraska as to that.

Mr. NORRIS. We all realize that.

Mr. McKELLAR. I realize that, and the purpose of the bill which I have introduced is to remedy that situation. I hope the Senator from Nebraska will look at the bill and see if what it proposes may not be done.

Mr. President, before I take my seat I desire to say that I have here some figures taken from the evidence of Colonel Robins, who is in charge of the Muscle Shoals plant, and I ask that those figures, together with Colonel Robins's testimony, may be inserted in the RECORD as a part of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

The matter referred to is as follows:

[From statement of Colonel Robins]

They—meaning the Alabama Power Co.—have brought in another hydroelectric plant of their own, and they use under that 30-day agreement our power in preference to generating power by steam plant, but they use their own water power in preference to ours. They were in better shape this year than they were in previous years, and there has been more rain. So they used less of our power, considerably, in 1928 than they did in 1927.

Statement of power generated at Wilson Dam, October, 1928

[From hearings before the subcommittee of House Committee on Appropriations—War Department appropriation bill—pages 186 and 187]

Period	Total generated	Power used in camp and plant	Delivered to transmission line	Value	Value of power furnished United States [1]	Revenue
1928	*Kilowatt-hours*	*Kilowatt-hours*	*Kilowatt-hours*			
Jan. 1-31	48,959,300	724,300	48,235,000	$104,640.80	$107.02	$104,533.78
Feb. 1-29	53,198,900	640,900	52,558,000	111,771.60	98.47	111,673.13
Mar. 1-31	38,296,600	586,600	37,710,000	80,559.40	110.98	80,448.42
Apr. 1-30	18,005,100	459,100	17,546,000	36,936.57	105.82	36,830.75
May 1-31	3,506,100	346,100	3,160,000	6,320.00	99.45	6,220.55
June 1-30	3,146,400	284,400	2,862,000	5,724.00	91.17	5,632.83
July 1-31	3,109,300	227,300	2,882,000	5,764.00	90.27	5,673.73
Aug. 1-31	14,635,900	236,900	14,399,000	28,798.00	98.06	28,699.94
Sept. 1-30	7,501,100	210,100	7,291,000	14,582.00	103.79	14,478.21
Oct. 1-31	8,773,800	368,800	8,405,000	16,810.00	109.99	16,700.01
Total for year	199,132,500	4,084,500	195,048,000	411,906.37	1,015.02	410,891.35
Total for Sept. 12, 1925, to Dec. 31, 1925	44,789,400	360,400	44,429,000	[2] 88,858.00	5,904.63	73,453.37
Total, Jan. 1, 1926, to Dec. 31, 1926	439,379,300	6,411,000	[3] 432,629,000	[4] 899,343.70	6,636.23	872,617.47
Total, Jan. 1, 1927, to Dec. 31, 1927	565,609,500	8,584,500	557,025,000	[5] 1,173,615.28	1,851.95	1,168,763.33
Grand total	1,248,910,700	19,440,400	1,229,131,000	2,573,723.35	15,407.83	2,525,725.52

[1] This represents power furnished by Alabama Power Co. to Ordnance Department, United States nitrate plants Nos. 1 and 2, and prior to May, 1926, for construction work at Dam No. 2.

[2] $9,500 of this amount to be deducted for installation of temporary substation.

[3] 339,300 kilowatt-hours lost in metering.

[4] $18,000 of this amount to be credited for installation of temporary substation, and $2,090 for power delivered in excess of power company's needs.

[5] $3,000 of this amount to be deducted for removal of temporary substation.

Cash received to date, $2,509,025.51.
October bill pending.

[From Colonel Robins's testimony]

Colonel ROBINS. In the last year the Alabama Power Co. have put in one new hydroelectric plant and increased the capacity of another of their hydroelectric plants, and during this year there has been more than the usual quantity of water for power purposes in that whole section of the country. While we have had lots of water they have had just as much, so that very naturally, looking at it from their standpoint, they make hay while the sun shines, use their own water power, and are not taking ours.

Mr. BARBOUR. Is there anybody else there you can sell to?

Colonel ROBINS. No, sir.

Mr. BARBOUR. You have got to sell it to the Alabama Power Co.?

Colonel ROBINS. We have got to sell it to them.

* * * * * * *

Colonel ROBINS. During the calendar year 1927 the plant was completely shut down for 21 days. During 1928, to November 1, the plant has been completely shut down for 39 days.

Mr. CLAGUE. What is the average rate at which you sell the power?

Colonel ROBINS. The average rate is about 2.1 mills per kilowatt-hour.

Mr. COLLINS. Isn't it exactly 2 mills?

Colonel ROBINS. Practically.

Mr. COLLINS. It is a sliding scale, but it levels out to 2 mills.

* * * * * * *

Mr. BARBOUR. Does that agreement with the Alabama Power Co. provide for a minimum amount of power that they must take?

Colonel ROBINS. No, sir. They only agree to take the power when otherwise they would have to start up their stand-by steam plants.

Mr. BARBOUR. Could you not get a contract with them by which they would agree to take a minimum amount of power?

Colonel ROBINS. Yes, sir; we could if we could make a contract over any considerable period. If we could go to them and say, "We are ready to make an agreement or contract with you for five years," we could get them to agree to take a minimum amount of power and guarantee a certain income.

The PRESIDING OFFICER. The bill will be referred to the Committee on Agriculture and Forestry.

Mr. HEFLIN. Mr. President, before we pass from the subject of Muscle Shoals, I should like to say a few words. I agree with a great deal that the Senator from Tennessee [Mr. McKELLAR] has said. We have invested $150,000,000 in the Muscle Shoals plant, and about $10,000,000 worth of the equipment is being used, while $140,000,000 worth of it is idle. Such a condition is inexcusable and indefensible. The water is going to waste, but the equipment is all there; and it is up to Congress to do something with it. The Senate passed a bill, which likewise was passed by the other House, that would have disposed of Muscle Shoals, put all of the power to work, and the project would have been bringing good returns to the Government and blessings and benefits to thousands and tens of thousands of people; but the President gave it a pocket veto. It is not the fault of the Senate and it is not the fault of the House that Muscle Shoals is not now in full operation. I hope that the Supreme Court will sustain the contention of the Senator from Nebraska, and if it does not decide as we wish it to decide, I would be ready to support a measure such as that suggested by the Senator from Tennessee [Mr. McKELLAR] for the temporary disposition of the power at Muscle Shoals until we can legislate permanently on the subject.

AMENDMENTS TO THE AGRICULTURAL APPROPRIATION BILL

Mr. HARRIS submitted two amendments intended to be proposed by him to House bill 15386, the Agricultural Department appropriation bill, which were referred to the Committee on Appropriations and ordered to be printed, as follows:

On page 71, after line 23, insert the following:

"For the control and prevention of spread of the phoney disease in the Peach Belt of Georgia, $15,000, to be immediately available."

On page 35, line 3, strike out "$1,077,231" and insert the following: "$1,162,231: *Provided*, That $85,000 of such sum is made available for the eradication of the phoney disease in the Peach Belt of Georgia, to be immediately available."

ENFORCEMENT OF THE EIGHTEENTH AMENDMENT

Mr. BLEASE submitted an amendment intended to be proposed by him to the resolution (S. Res. 287) providing for the appointment of a committee of five Senators to investigate the enforcement of the eighteenth amendment to the Constitution of the United States (submitted by Mr. JONES on January 3, 1929),

which was referred to the Committee on the Judiciary and ordered to be printed.

DECLINE IN PER CAPITA CONSUMPTION OF WHEAT, 1926

Mr. NYE submitted the following resolution (S. Res. 289), which was referred to the Committee on Agriculture and Forestry:

Resolved, That the Secretary of Agriculture and the Secretary of Commerce are requested (1) to investigate, in cooperation with each other, the cause or causes of the decline in the per capita consumption of wheat from 5.6 bushels in 1913 to 4.3 bushels in 1926, a decline equivalent to approximately eighty 1-pound loaves of bread, and determine among other things whether the bleaching of flour has had any effect on such decline, and (2) to report to the Senate, as soon as practicable, and in any event not later than the beginning of the next regular session of the Congress, the information resulting from such investigation.

CHANGES OF REFERENCE

On motion of Mr. SHIPSTEAD the Committee on Pensions was discharged from the further consideration of the bill (S. 5167) granting an annuity to Robert K. Brough, and it was referred to the Committee on Civil Service.

On motion of Mr. REED of Pennsylvania the Committee on Military Affairs was discharged from the further consideration of the bill (H. R. 9300) for the relief of Joseph N. Marin, and it was referred to the Committee on Naval Affairs.

CONFIRMATIONS OF SOUTH CAROLINA POSTMASTERS

The PRESIDING OFFICER. The Chair lays before the Senate a resolution coming over from a preceding day, which will be read.

The legislative clerk read the resolution (S. Res. 286) submitted by Mr. BLEASE January 3, 1929, as follows:

Resolved, That the subcommittee, of which Senator BROOKHART is chairman, now investigating the patronage and post-office situation in South Carolina, be and is requested to inform the Senate if it has any evidence upon which it can or expects to request the Senate not to confirm any person nominated for postmaster in South Carolina.

Mr. MOSES. Mr. President, I ask the author of the resolution if he would object to having it referred to the Committee on Post Offices and Post Roads? It would be a little difficult for a subcommittee to report directly to the Senate; but the subcommittee could report to the full committee, and then the report could be presented to the Senate. I assure the Senator that the matter will be dealt with promptly in the committee, as the Senator is himself a member of the committee.

Mr. BLEASE. That will be satisfactory to me, Mr. President.

The PRESIDING OFFICER. The resolution will be referred to the Committee on Post Offices and Post Roads.

TAXES AND TAX REFUNDS

Mr. ROBINSON of Arkansas. Mr. President, I desire to have printed in the RECORD an editorial appearing in the Washington Post of January 4, 1929, on the subject of Lawyers and Tax Experts, and likewise a brief Associated Press article on the subject of Taxes and Refunds.

The PRESIDING OFFICER (Mr. MCNARY in the chair). Without objection, the articles will be printed in the RECORD, as requested.

The articles are as follows:

LAWYERS AND TAX EXPERTS

The big list of tax refunds recently published, running into millions of dollars, doubtless caused many citizens to believe that Uncle Sam had voluntarily made a prompt and generous amends for his errors in collecting excess taxes. But another picture is presented by one of the concerns that appeared in the lists.

George F. Johnson, of the Endicott-Johnson Co., shoe manufacturers, points out that his company paid $851,808 in excess of what was legally due in taxes and that it recovered the money, but only after it had paid out $306,682 "to lawyers and tax experts." So it is out of pocket that amount, all because of the illegal exactions of the Treasury. "I have always thought," observes Mr. Johnson, "that if the Government had to pay in addition to the money due, with interest, the cost of legal service, they would be more careful about assessing and collecting illegal taxes."

Practically all of the corporations that paid illegal taxes were forced to hire lawyers and tax experts to recover the money. If the cost of this service was 35 per cent of the amount recovered, as in the case of the Endicott-Johnson Co., it is evident that the errors of the Treasury Department cost taxpayers at least $35,000,000 during the last fiscal year.

Uncle Sam may be a little hard on taxpayers, but see what a Santa Claus he is to lawyers and tax experts!

TAXES AND REFUNDS DEBATED IN HOUSE—COMPROMISE ON UNITED STATES STEEL'S CLAIM AT $26,000,000, TOLD IN REPORT—STATES ASK $200,000,000

(Associated Press)

The question of illegally collected taxes and their refund by the Government drew the attention of the House yesterday from three widely separated angles.

One was in a report of the Appropriations Committee telling of a compromise settlement of tax refunds, involving $26,000,000, to the United States Steel Corporation.

In the same report this committee also disclosed that the Treasury since 1917 had collected $4,061,769,209 in back taxes but during that period had refunded $975,012,356 which it had illegally taken from taxpayers.

The third angle developed at the Ways and Means Committee when it started hearings on a resolution proposing that the Federal Government reimburse 26 States for $200,000,000 direct taxes which the State governments contend were illegally collected in the years of 1866 to 1868, directly following the Civil War.

INTEREST TOTALS $11,000,000

The details of the proposed settlement with the Steel Corporation were given to the Appropriations Committee in testimony by Assistant Secretary Bond, of the Treasury, who said it would include the Government's payment of $15,000,000 in tax refunds plus $11,000,000 interest.

If the settlement is accepted by the steel company in lieu of the $161,000,000 for which it had sued, Bond said the case would be "closed forever."

Representative GARNER of Texas, one of the Democratic leaders, recently criticized on the House floor the proposal for the refunds to the steel company.

Describing the proposed settlement as "more of a compromise by the taxpayer than the Government," Bond explained that the original return of the company for 1917 showed a tax of about $199,000,000, but due to errors in determining whether certain income on long-term contracts of the concern and its subsidiaries belonged to 1916 or 1917 this tax was whittled down to $173,000,000. The first year in which the excess-profits tax was paid was 1917.

STATES FACE HARD BATTLE

Indications that the States in their efforts to recover the post-Civil War alleged illegally collected direct taxes face a strenuous fight developed in the Ways and Means Committee hearing on this question. States' rights, the statute of limitations, and the definiteness of their claims were debated by witnesses and members of the committee.

Secretary Mellon in a letter to the committee declared that not only several hundreds of millions of dollars would be required to settle all claims for illegally collected direct taxes since 1868, but it was doubtful if any accurate records on the States' claims could be produced as some of them had been destroyed with congressional consent.

In another letter Attorney General Sargent said the suit of the States should be brought before the Court of Claims not before the Supreme Court, as provided in the resolution.

Senator STEPHENS, Democrat, Mississippi, a principal witness for the States, argued that the States have been "treated unjustly" and that the "United States ought to pay its debts." Representative CHINDBLOM, of Illinois, a Republican member of the committee, contended that the statute of limitations had run out on the claims and that the States had been lax in pushing their suits.

MEXICAN IMMIGRATION

Mr. HARRIS. Mr. President, I ask permission to have placed in the RECORD a letter I wrote Secretary Davis, of the Department of Labor, and his reply furnishing information relative to the admission of immigrants from Mexico. I hope all Senators may take the time to read this letter.

During the last session of Congress I introduced a bill placing Mexico under the quota basis, just as all other countries are under the immigration law. At the time this law was passed I offered an amendment to place Mexico under the quota, which would permit only about 1,500 Mexicans to come into our country instead of an average of more than 50,000, which have been coming here—which is about one-third the total number that can come from all countries. My amendment was voted down, but last session I again introduced an amendment to the immigration bill placing Mexico under the quota.

The Immigration Committee, of which I am a member, held extensive hearings last session, and just before the Senate adjourned for the holidays the committee unanimously approved my measure. It is now on the calendar and I have urged that it be considered at an early date. My measure has been indorsed by the American Federation of Labor, the American Legion, Veterans of All Wars, many patriotic societies, and Secretary Davis, who has rendered such splendid service in the Department of Labor having charge of the enforcement

of the immigration laws, has in many speeches throughout the country favored my measure.

It is a great discrimination against the cotton growers of my section, where we grow less cotton than a few years ago, for the Mexican cheap labor to come into this country without limit and produce a few million additional bales of cotton making a surplus which brings down the price of cotton made by American labor.

The reading of the letter of Secretary Davis will convince anyone that my measure should pass, and I hope we may soon vote on it. I shall continue urging the matter. I oppose allowing our country to become flooded with Europeans or Asiatics.

I also ask to place in the RECORD an editorial on Mexican immigration from the Santa Rosa Republican.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
COMMITTEE ON APPROPRIATIONS,
December 15, 1928.

Hon. JAMES J. DAVIS,
Secretary of Labor, Washington, D. C.

MY DEAR MR. SECRETARY: In a recent debate in the Senate it was stated, in part, "If we could guard that Mexican border adequately we would not need to change the law at all, because the present-day requirements, under the act of 1917, as to literacy and physical health are sufficient to keep out 90 per cent of the Mexicans who are now coming in."

In view of pending legislation, in which it is proposed to include Mexico in the list of so-called quota countries, I will be glad to have your comment relative to the enforcement of the immigration laws on the Mexican border, with particular reference to the above-quoted opinion, which, as I understand it, is to the effect that only 10 per cent of the Mexicans who are now admitted from Mexico through regular channels are actually entitled to enter the United States.

How many Mexicans have been admitted as immigrants in each year since 1921, and what are the facts as to the age, sex, destination in the United States, etc., of such immigrants as shown in the statistical records of the Immigration Service?

What is the history of the war-time order removing certain restrictions on immigration from Mexico?

How many Mexicans were resident in the United States, according to the census of 1920, and in what States and cities were they found in greatest numbers? How does this record compare with the censuses of 1900 and 1910?

What is the illiteracy rate in the population of Mexico and among natives of Mexico in the United States?

Do Mexicans who come to the United States as immigrants remain here or do they return to Mexico? Has there been any change in this regard in recent years?

To what extent have natives of Mexico acquired American citizenship through naturalization?

If the quota law of 1921 had been applied to Mexico, what would have been the annual quota of that country? What would the quota be under the present law?

Generally speaking, what is the situation, so far as labor supply and demand are concerned, and are there indications that an increased foreign-labor supply will be needed during the coming year?

What countries are the principal sources of our present immigration?

Sincerely yours,

WM. J. HARRIS.

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, December 28, 1928.

Hon. WILLIAM J. HARRIS,
United States Senate, Washington, D. C.

MY DEAR SENATOR: I want to assure you that careful consideration has been given to your letter of December 15, in which you make several specific inquiries concerning immigration from Mexico and the distribution of Mexican immigrants in the various States and cities of the country, and I am giving you herewith the desired information, so far as it is available to the department and the Bureau of Immigration.

For convenience your queries are repeated and commented upon in the order in which they are presented:

"In a recent debate in the Senate it was stated in part, 'If we could guard that Mexican border adequately, we would not need to change the law at all, because the present-day requirements, under the act of 1917, as to literacy and physical health, are sufficient to keep out 90 per cent of the Mexicans who are now coming in.'

"In view of the pending legislation, in which it is proposed to include Mexico in the list of so-called quota countries, I will be glad to have your comment relative to the enforcement of the immigration laws on the Mexican border, with particular reference to the above-quoted opinion, which, as I understand it, is to the effect that only 10 per cent of the Mexicans who are now admitted from Mexico through the regular channels are actually entitled to enter the United States."

I am glad that you have asked me to comment upon this particular statement, which can be construed as nothing more or less than a charge that the Bureau of Immigration and the department are neglecting to enforce the immigration laws so far as the Mexican border is concerned. This unwarranted charge is only another indication of the fact that there is much misunderstanding concerning the immigration situation on our southern land boundary. Whatever may have been the situation on that border in the past, during recent years we have succeeded in enforcing the law so far as applicants for regular admission are concerned to an extent which, I think, is fairly comparable with such enforcement at seaports of entry and on the Canadian border. Of course, I am not unmindful of the fact that the Immigration Service deals with a different type of people at Mexican border ports of entry than at other ports, but I want to assure you that immigrants from Mexico are not admitted unless they meet the requirements laid down in the general immigration act of 1917, as well as in the act of 1924.

In the fiscal year ending June 30, last, a total of 59,016 immigrant aliens were admitted from Mexico, and of these 57,765 were of the Mexican race. As provided in the 1924 act, such immigrants are required to secure immigration visas from an American consul, and from the fact that 58,110 such visas were issued in Mexico during the year under consideration it is seen there is no important difference between the visas issued and the immigrants admitted. This means that applicants were first inspected by American consuls, as the law requires, and having met the tests applied by consuls they presented their visas to the immigration authorities at ports of entry, where they were medically inspected by officers of the United States Public Health Service and finally by the immigration authorities. In other words, they were subjected to the same procedure that applies in the case of immigrants coming from any country, and that being the case the statement that 90 per cent of them were actually inadmissible under the law is obviously ridiculous.

You will observe that the foregoing concerns regular immigration, which may be defined as aliens who have resided permanently in Mexico and who are admitted to the United States for permanent residence here. If it is the desire of Congress to materially reduce or limit the volume of such immigration, it is an absolute certainty that it can not be done under the present immigration laws.

The problem of aliens who are admitted to the United States as temporary visitors for business or pleasure and who fail to depart within a stipulated time, of course, exists on the Mexican border, just as it exists at Canadian border ports and to a lesser extent at seaports of arrival. The general immigration law contemplates that the passing back and forth over the land borders of temporary visitors shall be facilitated rather than hampered. Section 23 of the act of 1917 making it the duty of the Commissioner General of Immigration to "prescribe rules for the entry and inspection of aliens coming to the United States from or through Canada and Mexico, so as not unnecessarily to delay, impede, or annoy persons in ordinary travel between the United States and said countries. * * * Obviously, this is a wise and necessary provision, but it is also obvious that in attempting to carry out the spirit of the law its purpose is to some extent defeated.

The much-discussed General Order No. 86, relative to land-border crossing procedure, the validity of which is now being tested in the courts, was promulgated with a view to eliminating so far as possible abuses arising under the privileges which the law grants to residents of foreign contiguous territory seeking to enter the country as temporary visitors. This general order, which was issued on April 1, 1927, provides in effect that aliens residing in foreign contiguous countries and entering the United States to engage in existing employment or to seek employment in this country will not be considered as visiting the United States temporarily as tourists, or temporarily for business or pleasure, under any provisions of the immigration law which exempt visitors from complying with certain requirements thereof; that is, they will be considered as aliens of the "immigrant" class.

As you doubtless know, the legality of this order was upheld in a district court decision, which was reversed by the circuit court of appeals and is now before the Supreme Court for final determination. The immigration authorities in the various districts on both the northern and southern land boundaries fully understand that the department and Bureau of Immigration will be satisfied with nothing less than an adequate enforcement of this rule, and it is conceded that it has had a highly beneficial effect in affording a better control of the visitor class.

In a recent communication to the chairmen of the Senate and House Committees on Immigration I discussed the legal situation that has arisen in connection with General Order, No. 86, and have pointed out the necessity for immediate legislative action in the event an adverse decision is handed down from the Supreme Court. Consequently, I shall not attempt a further discussion of this important matter at this time.

"How many Mexicans have been admitted as immigrants in each year since 1921, and what are the facts as to the age, sex, destination in the

United States, etc., of such immigrants as shown in the statistical records of the Immigration Service?"

1921	29,603
1922	18,246
1923	62,709
1924	87,648
1925	32,378
1926	42,638
1927	66,766
1928	57,765
Total	397,753
Annual average	49,719

In connection with the marked increase during the years 1923 and 1924 it may be noted that numbers multiplied in spite of the fact that every feasible attempt was being made to bring about a more strict enforcement of the law on the border, and the increased immigration in those years is simply another indication of the fact that the provisions of the law relative to illiteracy, physical condition, etc., afford no adequate barriers so far as numbers are concerned. The sharp decline in the fiscal year 1925 is due largely to the visa and other requirements of the immigration act of 1924, which considerably increased the cost of immigration to the individual immigrant, but it is obvious that even this has not been effective in subsequent years.

The character of Mexican immigration with respect to age, sex, destination in the United States, etc., does not change materially from year to year and the items relating to immigrants admited during the last fiscal year are typical of such as a whole.

Immigration from Mexico, fiscal year 1928

Total number immigrant aliens admitted	59,016
RACES OR PEOPLES REPRESENTED	
Mexican	57,765
German	431
Spanish-American	114
English	110
Spanish	98
All other	498
SEX (MEXICANS)	
Male	37,965
Female	19,800
AGE (MEXICANS)	
Under 16	10,079
16 to 21	12,801
22 to 29	18,380
30 to 37	7,989
38 to 44	4,177
45 and over	4,339
Total	57,765
Single	32,209
Married	22,882
Widowed	2,637
Divorced	37
Total	57,765
OCCUPATIONS (MEXICANS)	
Professional	1,013
Skilled	5,725
Farmers	373
Farm laborers	4,989
Laborers, common	19,964
Servants	2,065
No occupation, including women and children	22,294
All others	1,342
MONEY SHOWN ON ARRIVAL (MEXICANS)	
Number showing $50 or over	12,011
Number showing less than $50	28,153
Total amount shown	$2,108,021
LITERACY (MEXICANS)	
Can read and write	45,094
Can read but not write	21
Illiterate (exempt, relatives, etc.)	2,571
Under 16 years of age	10,079
Immigrant aliens admitted (Mexicans)	57,765
Nonimmigrant aliens admitted (Mexicans)	3,857
	61,622
Immigrant aliens deported (Mexicans)	3,873
Nonimmigrant aliens deported (Mexicans)	9,198
	13,071
Increase of population (Mexicans)	48,551
Applicants for admission debarred (Mexicans)	2,595
Deported under warrant proceedings (Mexicans)	2,830

"What is the history of the war-time order removing certain restrictions on immigration from Mexico?"

The so-called war-time order of the Department of Labor, under which the literacy, contract labor, and head-tax provisions of the law were waived in behalf of Mexicans and other aliens coming from certain other sources for the purpose of agricultural labor, etc., was in force from May, 1917, to March 2, 1921. According to reports of the Commissioner General of Immigration, a total of 72,862 Mexicans were admitted under this order. Of this number, 34,922 had returned to Mexico by June 30, 1921; 414 died; 494 were examined for permanent residence and found eligible for admission; and 21,400 deserted their employment and disappeared. The Commissioner General states that of those who deserted their employment and disappeared, it is likely that a considerable percentage found their way back to Mexico.

"How many Mexicans were resident in the United States according to the census of 1920, and in what States and cities were they found in greatest numbers? How does this record compare with the censuses of 1900 and 1910?"

The following table shows the total number of natives of Mexico who were resident in the United States in the census years 1900, 1910, and 1920, and the principal States of residence in those years:

State	1920	1910	1900
Texas	251,827	125,016	71,062
California	88,771	33,694	8,086
Arizona	61,580	29,987	14,172
New Mexico	20,272	11,918	6,649
Kansas	13,770	8,429	71
Colorado	11,037	2,602	274
Oklahoma	6,884	2,744	134
Illinois	4,032	672	156
Missouri	3,411	1,413	162
New York	2,999	555	353
Iowa	2,650	620	29
Nebraska	2,611	290	27
Louisiana	2,487	1,025	488
Pennsylvania	1,818	153	110
Wyoming	1,801	188	58
Idaho	1,215	133	28
Nevada	1,177	732	98
Utah	1,166	166	41
All other States	6,910	1,578	1,395
Total	486,418	221,915	103,393

The principal cities of residence of natives of Mexico in the three census years under consideration were:

City	1920	1910	1900
San Antonio	28,477	9,924	3,288
Los Angeles	21,653	5,632	817
Houston	3,953	491	118
Fort Worth	3,831	426	59
San Francisco	3,810	1,792	1,459
New York	2,572	426	282
Dallas	2,295	134	41
Kansas City, Kans	2,043	102	3
Kansas City, Mo	1,920	233	24
Denver	1,418	226	19
New Orleans	1,306	289	299
Chicago	1,224	188	102
Oakland	1,033	252	95
Omaha	746	23	5
Salt Lake City	217	44	4
Des Moines	158	3	1
Other cities of 25,000	55,124	17,631	750

The above figures show a very decided tendency on the part of our Mexican-born population to become city dwellers. For example, the Mexican-born population of the State of Texas just about doubled between 1910 and 1920, but in the same 10 years there was a threefold increase in the city of San Antonio and eightfold increases in Houston and Fort Worth.

"What is the illiteracy rate in the population of Mexico and among natives of Mexico in the United States?"

The United States Bureau of Education advises that the illiteracy rate in Mexico is estimated at about 62 per cent of the population, including persons of all ages. The census reports do not show illiteracy in the United States by country of birth, and the department has no knowledge of Mexicans in the United States. When it is considered that more than one-third of the people in Mexico of all ages are literate it becomes apparent that the literacy requirements of the general immigration law, referred to in the recent Senate debate, can not be depended upon as a means of reducing immigration from that country.

"Do Mexicans who come to the United States as immigrants remain here, or do they return to Mexico? Has there been any change in this regard in recent years?"

There is no official record of the number of alien residents leaving the United States for permanent residence abroad prior to the fiscal year 1908, when steamship lines were first required by law to furnish manifests of outgoing alien passengers. The immigration act of 1917 amended the law in this particular by providing also that immigration officials shall record certain information concerning aliens leaving the United States by way of the Canadian and Mexican borders for permanent residence in a foreign country. Comparatively few aliens return to Mexico by sea, so that the records from 1908 to and including 1917 are of little or no value. Moreover, it is obviously difficult to make a record of all aliens leaving the United States over the land borders, and field officers of the Immigration Service tell me that the

figures reported for the Mexican border are not complete. However this may be, existing records show a very considerable decrease in the movement of Mexicans returning to Mexico for permanent residence in the last few years. The figures in this regard from 1918 to 1928 are given below:

Year	Mexicans admitted	Mexicans departed
1918	17,602	25,084
1919	28,844	17,793
1920	51,042	6,412
1921	29,603	5,519
1922	18,246	5,770
1923	62,709	2,479
1924	87,648	1,878
1925	32,378	2,875
1926	42,638	3,158
1927	66,766	2,774
1928	57,765	3,873
Total	495,241	77,615

The records of the Census Bureau appear to substantiate our immigration records as to the flow and ebb of Mexican immigration. For example, 318,674 Mexican immigrant aliens were regularly admitted to the United States during the 10 years from July 1, 1910, to June 30, 1920, and the records—which, as already stated, are faulty at least until 1918—show that 54,404 emigrant aliens of the same race departed during the same 10 years, leaving a net gain of 264,270. According to the census of 1910, there were 221,915 natives of Mexico resident in the United States in that year and 486,418 in 1920, the increase of 264,503 being almost identical with that shown in the Immigration Bureau statistics. Of course, no one who is acquainted with the Mexican border situation will contend that no Mexicans entered illegally, or that all who left the country were recorded; but considering these and other factors that affect the situation, our immigration figures certainly present a good picture of the growth of Mexican population.

"To what extent have natives of Mexico acquired American citizenship through naturalization?"

Of the 478,383 natives of Mexico of the white race resident in the United States according to the census of 1920, 22,732, or 4.8 per cent, were fully naturalized and 2,989 had secured their first papers. In the matter of acquiring citizenship, natives of Mexico ranked last among the various nationalities, their nearest competitors for last place being natives of Albania, 7.4 per cent of whom were naturalized in 1920. The commissioner of naturalization advises that during the past five fiscal years a total of 497 citizens of Mexico have been granted United States citizenship, the distribution of these, by years, being as follows:

1924	92
1925	101
1926	72
1927	112
1928	120

"If the quota law of 1921 had been applied to Mexico, what would have been the annual quota of that country? What would the quota be under the present law?"

Under the 1921 law quotas were fixed at 3 per cent of the population as shown by the census of 1910. According to that census, there were 221,915 natives of Mexico in the United States, and accordingly that country's annual quota would have been 6,657. According to the census of 1890 a total of 77,854 natives of Mexico were resident in the United States at that time. Accordingly, the quota available for natives of Mexico under the act of 1924 would be 2 per cent of that number, or 1,557.

"Generally speaking, what is the situation so far as labor supply and demand are concerned, and are there indications that an increased foreign labor supply will be needed during the coming year?"

In reply to this inquiry let me quote the following extract from a statement just issued by the Director General of the United States Employment Service:

"After a careful survey of business and industrial conditions, and improvements and developments now in the offing, we predict that 1929 will be a good year.

"The iron and steel industry is in a healthy condition, and the prospects are for further improvement. Reports from the automotive industry indicate that 1929 will be an outstanding year in the history of automobile manufacture. The textile industry has worked itself into a better position and it is expected that it will continue to improve. Reports from miscellaneous industries describe the outlook for the new year as bright. The expected development and expansion of the aircraft industry should offer employment opportunities for many skilled workmen. A tremendous road-building program will be under way as soon as weather conditions will permit. The prospects are that building construction will equal, and perhaps surpass, the splendid record of 1928. Opportunities for skilled tradesmen appear to be very promising. Agricultural employment prospects for the year are regarded as very good.

"In view of the sound business conditions and the excellent prospects for the year, it appears that labor on the whole will be well employed; but there will be some unemployment, particularly amongst the white-collar class and manual and unskilled workers."

What countries are the principal sources of our present immigration?

The principal sources of immigration in the fiscal year 1928 were as follows:

Canada	73,154
Mexico	59,016
Germany	45,778
Irish Free State	24,544
Great Britain and Northern Ireland	20,682
Italy	17,728
Poland	8,755
Sweden	8,051
Norway	5,660

The above figures represent the number of immigrant aliens admitted who had last resided permanently in the countries named. They should not be confused with the statistics in which immigrants are classified by races or peoples, or by countries of birth. For example, the annual quota of Italy under the act of 1924 is 3,845, and yet 17,728 immigrant aliens were admitted from that country in the fiscal year 1928. This discrepancy is accounted for by the fact 12,686 wives and children of American citizens, together with lesser numbers of other classes, who are also accorded a nonquota status under the law, were admitted during the year. On the other hand, only 20,682 immigrant aliens who had last resided in Great Britain and Northern Ireland were admitted in 1928, although the annual quota of that area is 34,007 and was exhausted for the year. This is due to the fact that many natives of England, Scotland, Wales, and Northern Ireland who reside in Canada or other countries secure their British visas in such countries and are recorded as coming from them rather than from the country of their birth.

In connection with the foregoing discussion of immigration from Mexico I am venturing to bring to your attention Senate bill 3019, Seventieth Congress, first session, which in part deals with that subject, as well as with immigration from other countries of the New World. You will note the bill proposes that the quota principle in a modified form be applied to immigration from such countries, and also that provision is made for the temporary admission from foreign contiguous territory of a limited number of aliens to perform seasonal or emergency labor, such provision being limited to a period of two years, the purpose being to avoid any real embarrassment to employers of agricultural and other labor in the border States that might follow the immediate application of the quota to foreign contiguous countries. In my judgment the provisions of Senate bill 3019, in respect to immigration from the present nonquota countries, is entirely worthy of serious consideration.

I am inclosing a copy of the Senate committee print containing my comments on the bill in question.

Sincerely yours,

JAMES J. DAVIS.

[Editorial from the Santa Rosa (Calif.) Republican]

PEON SALVE FOR "ITCHING PALMS"

Veterans of Foreign Wars are conducting a vigorous educational campaign throughout the State to acquaint a more or less apathetic public with the menace of an increasing influx of Mexican peons into southern California. These undesirables have heretofore been allowed to "crash" our southern international boundary gates without apparent let or hindrance on the part of Federal immigration officials.

Just the other day a foreign war veteran, over the radio, told of the horrible conditions existing in Los Angeles County. In one subdivision there—the Belvedere district—out of a population of 40,000 Mexicans there were only 250 registered voters. Almost the entire population were people of preponderantly Indian blood who are ineligible for American citizenship and who, solely on that account—to say nothing of a hundred other reasons—should never have been allowed to enter the country in the first place.

A press dispatch Saturday from Washington intimated that Congress was ready to consider the Harris immigration bill, placing Mexico under a definite quota, as should have been done in the act of 1921. Senator HARRIS, Democrat of Georgia, author of the measure, said that he was confident the bill would be considered shortly after Christmas, and predicted that it would pass.

If railroads and farms in southern California could be induced to pay a decent living wage to white labor, there would be no need to import this peon riffraff. To become legally eligible for American entry, a Mexican must have a "preponderance of white blood." This law has not been enforced. Peon salve should not be allowed to allay itching palms. The Harris bill offers a solution. It should be passed immediately, and immediately enforced.

MULTILATERAL PEACE TREATY

Mr. BORAH. I move that the Senate proceed to the consideration of the so-called multilateral peace treaty as in open executive session.

The motion was agreed to; and the Senate, in open executive session, resumed the consideration of the treaty for the renunciation of war transmitted to the Senate for ratification by the President of the United States, December 4, 1928, and reported from the Committee on Foreign Relations, December 19, 1928.

Mr. SWANSON obtained the floor.

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Frazier	La Follette	Schall
Barkley	George	McKellar	Sheppard
Bayard	Gerry	McLean	Shipstead
Bingham	Glass	McMaster	Shortridge
Blaine	Glenn	McNary	Smoot
Blease	Goff	Moses	Steck
Borah	Gould	Neely	Steiwer
Brookhart	Greene	Norbeck	Stephens
Broussard	Hale	Norris	Swanson
Bruce	Harris	Nye	Thomas, Idaho
Burton	Hastings	Oddie	Thomas, Okla.
Capper	Hawes	Overman	Tydings
Caraway	Hayden	Pine	Vandenberg
Couzens	Heflin	Ransdell	Wagner
Curtis	Johnson	Reed, Mo.	Walsh, Mass.
Deneen	Jones	Reed, Pa.	Walsh, Mont.
Dill	Kendrick	Robinson, Ark.	Warren
Edge	Keyes	Robinson, Ind.	Waterman
Fletcher	King	Sackett	Watson

Mr. HEFLIN (when Mr. BLACK's name was called). My colleague [Mr. BLACK] is absent on account of illness. I ask that this announcement may stand for the day.

Mr. NORRIS (when Mr. HOWELL's name was called). I desire to announce that my colleague the junior Senator from Nebraska [Mr. HOWELL] is detained from the Senate on account of illness. I ask that this announcement may stand for the day.

Mr. FLETCHER (when Mr. TRAMMELL's name was called). I desire to announce that my colleague [Mr. TRAMMELL] is unavoidably detained from the Senate.

Mr. McKELLAR (when Mr. TYSON's name was called). My colleague the junior Senator from Tennessee [Mr. TYSON] is absent on account of illness in his family. I ask that this announcement may stand for the day.

Mr. WAGNER. I wish to announce that my colleague the senior Senator from New York [Mr. COPELAND] is unavoidably absent because of illness in his family. I will let this announcement stand for the day.

Mr. BURTON. My colleague the senior Senator from Ohio [Mr. FESS] is absent to-day on account of important business. I desire this notice to stand for the day.

The PRESIDING OFFICER. Seventy-six Senators having answered to their names, a quorum is present. The Senator from Virginia will proceed.

Mr. SWANSON. Mr. President, we are considering for ratification a treaty which has occasioned much difference of opinion. Its overzealous advocates have claimed that it abolishes or outlaws war and marks an epoch in the history of world affairs which will result in the consummation of perpetual peace. Its critics and opponents insist that it is a feeble gesture for peace, is worthless as a peace pact, and instead of outlawing war legalizes war, and that any war that has been conducted for centuries would be permissible under this so-called "peace pact."

Let us dispassionately, without being influenced by the vehement declarations of the advocates or opponents of this treaty, examine it and ascertain its full and fair meaning—what it permits and what it forbids—so that we can determine calmly and intelligently whether or not we should exercise our constitutional right to advise and consent to its ratification, and, if we do, whether it needs further interpretations or reservations.

Since every document is construed by giving consideration to the circumstances under which it was entered into, and the declarations made during the negotiations, and the understandings arrived at regarding its interpretation before the instrument was signed, we will examine those that are relevant to the treaty.

On the tenth anniversary of the entrance of the United States into the World War, M. Briand, Secretary of State of France, proposed to the United States that the two countries should enter into a treaty of perpetual friendship and peace. After much discussion, on June 20, 1927, the Government of France submitted to the Government of the United States the proposed pact, the substance of which is as follows:

ARTICLE 1

The high contracting powers solemnly declare, in the name of the French people and the people of the United States of America, that they condemn recourse to war and renounce it, respectively, as an instrument of their national policy toward each other.

ARTICLE 2

The settlement or the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise between France and the United States of America, shall never be sought by either side except by pacific means.

On December 28, 1927, Secretary of State Kellogg made a reply to the French Government regarding this overture, in which he said:

* * * it has occurred to me that the two Governments, instead of contenting themselves with a bilateral declaration of the nature suggested by M. Briand, might make a more signal contribution to world peace by joining in an effort to obtain the adherence of all of the principal powers of the world to a declaration renouncing war as an instrument of national policy. Such a declaration, if executed by the principal world powers, could not but be an impressive example to all the other nations of the world, and might conceivably lead such nations to subscribe in their turn to the same instrument, thus perfecting among all the powers of the world an arrangement heretofore suggested only as between France and the United States.

The Government of the United States is prepared, therefore, to concert with the Government of France with a view to the conclusion of a treaty among the principal powers of the world, open to signature by all nations, condemning war and renouncing it as an instrument of national policy in favor of the pacific settlement of international disputes.

On January 5, 1928, the French Government replied to the suggestions made by Secretary of State Kellogg, in which reply it stated:

I am authorized to inform you that the Government of the Republic is disposed to join with the Government of the United States in proposing for agreement by all nations a treaty to be signed at the present time by France and the United States and under the terms of which the high contracting parties shall renounce all war of aggression, and shall declare that for the settlement of differences of whatever nature which may arise between them they will employ all pacific means. The high contracting parties will engage to bring this treaty to the attention of all states and invite them to adhere.

It should be noted that the terms of the French proposal were for the renouncement of all war of aggression, but it declares for the settlement of all differences of whatever nature which may arise by the employment of all pacific means.

On January 11, 1928, Secretary Kellogg replied to the French proposals. I shall only quote that portion of the reply which throws light upon the proper construction of the treaty now pending in the Senate. Secretary Kellogg said:

In the second place, and this point is closely related to what goes before, M. Briand's reply of January 5, 1928, in expressing the willingness of the Government of France to join with the Government of the United States in proposing a multilateral treaty for the renunciation of war, apparently contemplates that the scope of such treaty should be limited to wars of aggression. The form of treaty which your Government submitted to me last June which was the subject of my note of December 28, 1927, contained no such qualification or limitation.

I am not informed of the reasons which have led your Government to suggest this modification of its original proposal, but I earnestly hope that it is of no particular significance and that it is not to be taken as an indication that the Government of France will find itself unable to join with the Government of the United States in proposing, as suggested above, that the original formula submitted by M. Briand which envisaged the unqualified renunciation of all war as an instrument of national policy be made the subject of preliminary discussions with the other great powers for the purpose of reaching a tentative agreement as to the language to be used in the proposed treaty.

If your Government is agreeable to the plan outlined above and is willing that further discussions of the terms of the proposed multilateral treaty be based upon the original proposal submitted to me by M. Briand last June, I have the honor to suggest that the Government of France join with the Government of the United States in a communication to the British, German, Italian, and Japanese Governments transmitting the text of M. Briand's original proposal and copies of the subsequent correspondence between the Governments of France and the United States for their consideration and comment, it being understood, of course, that these preliminary discussions would in no way commit any of the participating Governments pending the conclusion of a definitive treaty.

On January 21, 1928, the French Government replied to the proposal of Mr. Kellogg, and I shall only quote the portion of this reply which is pertinent to the question before us. It is as follows:

There is, however, a situation of fact to which my Government has requested me to draw your particular attention.

The American Government can not be unaware of the fact that the great majority of the powers of the world, and among them most of the principal powers, are making the organization and strengthening of peace the object of common efforts carried on within the framework of the League of Nations. They are already bound to one another by a covenant placing them under reciprocal obligations, as well as by agreements such as those signed at Locarno in October, 1925, or by international conventions relative to guaranties of neutrality, all of which engagements impose upon them duties which they can not contravene.

* * * Subject to these observations, the Government of the Republic would, moreover, very gladly welcome any suggestions offered by the American Government which would make it possible to reconcile an absolute condemnation of war with the engagements and obligations assumed by the several nations and the legitimate concern for their respective security.

On February 27, 1928, Secretary of State Kellogg replied to this note, which reply contains the following statements:

* * * As I understand your note of January 21, 1928, the only substantial obstacle in the way of unqualified acceptance by France of the proposals which I submitted in my notes of December 28, 1927, and January 11, 1928, is your Government's doubt whether as a member of the League of Nations and a party to the treaties of Locarno and other treaties guaranteeing neutrality France can agree with the United States and the other principal world powers not to resort to war in their mutual relations without ipso facto violating her present international obligations under those treaties. In your excellency's last note this question was suggested for consideration. If, however, members of the League of Nations can not, without violating the terms of the covenant of the league, agree among themselves and with the Government of the United States to renounce war as an instrument of their national policy, it seems idle to discuss either bilateral or multilateral treaties unreservedly renouncing war. I am reluctant to believe, however, that the provisions of the covenant of the League of Nations really stand in the way of the cooperation of the United States and members of the League of Nations in a common effort to abolish the institution of war. * * *

I trust, therefore, that neither France nor any other member of the League of Nations will finally decide that an unequivocal and unqualified renunciation of war as an instrument of national policy either violates the specific obligations imposed by the covenant or conflicts with the fundamental idea and purpose of the League of Nations. On the contrary, is it not entirely reasonable to conclude that a formal engagement of this character entered into by all of the principal powers, and ultimately, I trust, by the entire family of nations, would be a most effective instrument for promoting the great ideal of peace which the league itself has so closely at heart? If, however, such a declaration were accompanied by definitions of the word "aggressor" and by exceptions and qualifications stipulating when nations would be justified in going to war, its effect would be very greatly weakened and its positive value as a guaranty of peace virtually destroyed. * * * I therefore renew the suggestion contained in my note of January 11, 1928, that the Government of France join with the Government of the United States in transmitting to the British, Italian, German, and Japanese Governments for their consideration and comment the text of M. Briand's original proposal, together with copies of the subsequent correspondence between France and the United States as a basis for preliminary discussions looking to the conclusion of an appropriate multilateral treaty proscribing recourse to war.

On March 30, 1928, the French Government replied to the proposals of Secretary Kellogg, and, as heretofore, I shall only read that portion of the reply which is directly pertinent to the pending pact:

At the same time it is clear that in order not to turn an instrument of progress and peace into a means of oppression, if one of the signatory states should fail to keep its word, the other signatories should be released from their engagement with respect to the offending state. On this second point, as on the first, the French Government believes itself fully in accord with the Government of the United States.

My Government likewise gathers from the declarations which your excellency was good enough to make to me on the 1st of last March, the assurance that the renunciation of war, thus proclaimed, would not deprive the signatories of the right of legitimate defense. Such an interpretation tends to dissipate apprehensions, and the French Government is happy to note it.

I wish the Senate to understand clearly that the negotiations proceeded with a complete reservation of the right of legitimate self-defense without limitation or equivocation. I read further. I wish to do this because the speech of Mr. Kellogg on April 28, 1928, was based on a reply and interpretation to satisfy the request contained in this note of the French Government:

If such is the attitude of the American Government on these three fundamental points, and if it is clearly understood in a general way that the obligations of the new pact should not be substituted for, or prejudice in any way, previous obligations contained in international instruments such as the covenant of the League of Nations, the Locarno agreements, or treaties guaranteeing neutrality whose character and scope can not be modified thereby, then the differences of opinion which have appeared in the course of previous phases of the negotiation have to do more with words than with the reality of the problem facing the two Governments to-day.

Hence, in accordance with the proposal contained in your note of January 11, which you kindly renewed in your note of the 27th of February, the French Government would be prepared forthwith to join with the Government of the United States in submitting for the consideration of the Governments of Germany, Great Britain, Italy, and Japan the correspondence exchanged between France and the United States since June, 1927, and in proposing at the same time for the assent of the four Governments a draft agreement essentially corresponding in purpose to the original proposal of M. Briand in the multipartite form desired by the United States with the changes of wording made necessary by the new concept; the signatory powers of such an instrument, while not prejudicing their rights of legitimate defense within the framework of existing treaties, should make a solemn declaration condemning recourse to war as an instrument of national policy or, in other words, as a means of carrying out their own spontaneous, independent policy.

These are the terms upon which France was willing to conduct the negotiations and reach an agreement. Let us ascertain what was especially specified:

First. Legitimate self-defense in each nation, without limitation or restriction.

Second. That the obligations contained in the covenant of the League of Nations, the obligations of the Locarno treaties, which they intended not to obviate by any agreement, and the neutrality treaties should be preserved and not be interfered with by the proposed pact.

On April 13, 1928, the United States Government delivered to the Governments of Great Britain, Germany, Italy, and Japan identic notes, in which notes it submitted its proposed multilateral pact to make effective its suggestions. The suggested draft of the treaty in its preamble contained the following pertinent matter:

Desirous by formal act to bear unmistakable witness that they condemn war as an instrument of national policy and renounce it in favor of the pacific settlement of international disputes.

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy.

The draft treaty was as follows:

ARTICLE 1

The high contracting parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

ARTICLE 2

The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

On April 20, 1928, the French Government submitted to the various governments its draft of a proposed multilateral pact, which I shall read. It must be understood that France proposed to submit a multilateral pact, Kellogg proposed to submit a multilateral pact, and the nations were to consider these and reach a conclusion regarding the one that would ultimately be signed. I will read the French multilateral proposition, since it has not been read to the Senate. It is as follows:

ARTICLE 1

The high contracting parties without any intention to infringe upon the exercise of their rights of legitimate self-defense within the framework of existing treaties, particularly when the violation of certain of the provisions of such treaties constitutes a hostile act, solemnly declare that they condemn recourse to war and renounce it as an instrument of national policy; that is to say, as an instrument of individual, spontaneous, and independent political action taken on their own initiative, and not action in respect of which they might become involved through the obligation of a treaty such as the covenant of the League of Nations or any other treaty registered with the League of Nations. They undertake on these conditions not to attack or invade one another.

That is clear, distinct, and positive, that the covenant of the League of Nations, the Locarno treaties, and the neutrality treaties, were not to be interfered with by this pact.

ARTICLE 2

The settlement or solution of all disputes or conflicts, of whatever nature or origin, which might arise among the high contracting parties or between any two of them, shall never be sought on either side except by pacific methods.

ARTICLE 3

In case one of the high contracting parties should contravene this treaty the other contracting powers would ipso facto be released with respect to that party from their obligations under this treaty.

ARTICLE 4

The provisions of this treaty in no wise affect the rights and obligations of the contracting parties resulting from prior international agreements to which they are parties.

In considering the replies of the Governments to the Kellogg proposal, it must also be understood and remembered that the French pact had been sent to each Government and the replies were made with each pact pending before the chancellories.

These proposals were sent to the Governments previously named. On April 27, 1928, the German Government transmitted a note, the substance of which is as follows:

So far as Germany is concerned, the covenant of the League of Nations and the Rhine pact of Locarno come into consideration as international agreements which might affect the substance of the new pact; other international obligations of this kind have not been entered into by Germany. Respect for the obligations arising from the covenant of the League of Nations and the Rhine pact must, in the opinion of the German Government, remain inviolable. The German Government is, however, convinced that these obligations contain nothing which could in any way conflict with the obligations provided for in the draft treaty of the United States. On the contrary, it believes that the binding obligation not to use war as an instrument of national policy could only serve to strengthen the fundamental idea of the covenant of the League of Nations and of the Rhine pact.

The German Government proceeds on the belief that a pact after the pattern submitted by the Government of the United States would not put in question the sovereign right of any state to defend itself. It is self-evident that if one state violates the pact the other contracting parties regain their freedom of action with reference to that state. The state affected by the violation of the pact is therefore not prevented from taking up arms on its own part against the breaker of the peace. * * *

The German Government can accordingly declare that it is ready to conclude a pact in accordance with the proposal of the Government of the United States and to this end to enter into the necessary negotiations with the governments concerned.

What does that disclose? It is clear, distinct, and incontrovertible that Germany reserves to herself, in interpreting this treaty, an absolute right of self-defense, without limitation in regard to territory or anything else, an absolute, inherent right of self-defense. Second, it reserved to itself the obligations contained in the covenant of the League of Nations and the Rhine pact, known as the Locarno treaty.

In these conditions and understandings, distinct, clear, and specific, Germany accepts the treaty proposed.

On May 4, 1928, the Italian Government replied. Its reply in a general way gave its assent to the multilateral treaty, but contained nothing that would be at all illuminating as to the interpretation to be given to the pending pact.

On April 28, 1928, after Secretary Kellogg had received the reply of France which I have read, in a speech to the American Society of International Law at Washington, he gave an interpretation of the proposed pact, and pointed out clearly and distinctly the understandings of France and the objections of France provided the pact did not permit certain things. His remarks on that occasion were as follows:

There seem to be six major considerations which the French Government has emphasized in its correspondence and in its draft treaty, namely, that the treaty must not (1) impair the right of legitimate self-defense; (2) violate the covenant of the League of Nations; (3) violate the treaties of Locarno; (4) violate certain unspecified treaties guaranteeing neutrality; (5) bind the parties in respect of a state breaking the treaty; (6) come into effect until accepted by all or substantially all of the powers of the world. The views of the United States on these six points are as follows:

(1) Self-defense: There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self-defense. If it has a good case, the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. Inasmuch as no treaty provision can add to the natural right of self-defense, it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defense, since it is far too easy for the unscrupulous to mold events to accord with an agreed definition.

(2) The league convenant: The covenant imposes no affirmative primary obligation to go to war. The obligation, if any, is secondary and attaches only when deliberately accepted by a state. Article 10 of the covenant has, for example, been interpreted by a resolution submitted to the fourth assembly, but not formally adopted owing to one adverse vote, to mean that "it is for the constitutional authorities of each member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces." There is, in my opinion, no necessary inconsistency between the covenant and the idea of an unqualified renunciation of war. The covenant can, it is true, be construed as authorizing war in certain circumstances, but it is an authorization and not a positive requirement.

(3) The treaties of Locarno: If the parties to the treaties of Locarno are under any positive obligation to go to war, such obligation certainly would not attach until one of the parties has resorted to war in violation of its solemn pledges thereunder. It is therefore obvious that if all the parties to the Locarno treaties become parties to the multilateral antiwar treaty proposed by the United States, there would be a double assurance that the Locarno treaties would not be violated by recourse to arms. In such event it would follow that resort to war by any state in violation of the Locarno treaties would also be a breach of the multilateral antiwar treaty, and the other parties to the antiwar treaty would thus as a matter of law be automatically released from their obligations thereunder and free to fulfill their Locarno commitments. The United States is entirely willing that all parties to the Locarno treaties should become parties to its proposed antiwar treaty either through signature in the first instance or by immediate accession to the treaty as soon as it comes into force in the manner provided in article 3 of the American draft, and it will offer no objection when and if such a suggestion is made.

(4) Treaties of neutrality: The United States is not informed as to the precise treaties which France has in mind and can not, therefore, discuss their provisions. It is not unreasonable to suppose, however, that the relations between France and the states whose neutrality she has guaranteed are sufficiently close and intimate to make it possible for France to persuade such states to adhere seasonably to the antiwar treaty proposed by the United States. If this were done no party to the antiwar treaty could attack the neutralized states without violating the treaty and thereby automatically freeing France and the other powers in respect of the treaty-breaking state from the obligations of the antiwar treaty. If the neutralized states were attacked by a state not a party to the antiwar treaty, the latter treaty would of course have no bearing and France would be as free to act under the treaties guaranteeing neutrality as if she were not a party to the antiwar treaty. It is difficult to perceive, therefore, how treaties guaranteeing neutrality can be regarded as necessarily preventing the conclusion by France or any other power of a multilateral treaty for the renunciation of war.

(5) Relations with a treaty-breaking state: As I have already pointed out, there can be no question as a matter of law that violation of a multilateral antiwar treaty through resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking state. Any express recognition of this principle of law is wholly unnecessary.

In this reply of Secretary Kellogg he discusses the objections, reservations, and interpretations desired by France in regard to self-defense. In the reply he says:

There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense.

That is unlimited. Further, he said:

That right is inherent in every sovereign State and is implicit in every treaty.

That makes it unlimited in every respect. But he has another statement:

Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense.

To some minds it has been thought that naming the territory restricts or eliminates the broader definition of self-defense as an inherent and inalienable right, broad as words and as limitless as can be. I take a different view. I think this is simply an illustration, and that a minor illustration can not repeal or abolish the general term relating to self-defense. But I will allude to that later. Even that idea disappears later.

Now as to the league covenant. Secretary Kellogg dissipates all doubt as to that. Let it be understood that the covenant of the league would not be interfered with by this pact. That is covered in the second part of his statement.

Third, he refers to the Locarno treaties, the ultimate aim of which was to insure peace in the western part of Europe, and also Poland and other countries. The argument showed that he considered these not to be contrary to the pact. The treaties of neutrality are also discussed in the same spirit.

Then, fifth, he discussed the relations of a treaty-breaking State, showing that the contention of France was absolutely right that any nation that broke the treaty had no right to claim its protection.

After this speech, and negotiations being conducted and proposals made pro and con, on June 23, 1928, to bring the matter to a definite conclusion, to ascertain whether we would or would not have a peace pact, Secretary Kellogg addressed to the various governments which were to be the original signatories to the multilateral treaty a copy of this speech, which was to be considered by them in connection with the pact, which at that time he proposed to send to them, thus stating that this was the official interpretation of his Government regarding this pact or treaty, and asking them to reply directly whether they would consent to the new pact he submitted.

The only difference between the new pact he submitted and the older one was in the preamble. In the preamble of the subsequent pact he provided that a nation breaking the treaty would be deprived of its protection.

On May 19, with the French pact before it for consideration, and the Kellogg speech of interpretation before it, the British Government made a reply to the proposal of Mr. Kellogg for acceptance of his pact. I shall quote parts of this reply as it affects the interpretation given to the pending pact:

> After studying the wording of Article I of the United States draft, His Majesty's Government do not think that its terms exclude action which a state may be forced to make in self-defense. Mr. Kellogg has made it clear in the speech to which I have referred above that he regards the right of self-defense as inalienable, and His Majesty's Government are disposed to think that on this question no addition to the text is necessary.

What does that mean? Considering the speech of Secretary Kellogg on the 28th of April, transmitted as an official document, as an official interpretation, the British Secretary of State for Foreign Affairs says his Government understands that there is an inherent right of self-defense, without limitation, without equivocation, and not limited to territory. What can be more clear, what can be more specific, what can be more positive than that interpretation? I wish to say in this connection that I have yet to hear of a foreign government that puts any limitation on the right of self-defense. That suggestion has been made only by some Senators in this body.

> If it is agreed that this is the principle which will apply in the case of this particular treaty. His Majesty's Government are satisfied and will not ask for the insertion of any amendment.
>
> Means can no doubt be found without difficulty of placing this understanding on record in some appropriate manner so that it may have equal value with the terms of the treaty itself.

The means adopted was the exchange of notes by the various governments. I wish to refer in this connection to their interpretations of the speech and note of Secretary Kellogg in which he set forth the principle of the right of self-defense without limitation and without restriction, and in which he said the question of self-defense would be for each nation to decide for itself. In this respect our rights are preserved by the same exchange of notes as is done by other governments in which they preserved their rights in their respective notes. Mr. Chamberlain said there was no necessity to have a reservation and no necessity to have amendments to preserve the right of self-defense and he waived any right of an amendment, being satisfied in this matter on the interpretation given by him to the speech of Secretary Kellogg transmitted as an official document. When Great Britain and all other nations are satisfied that the principle of self-defense is fully and completely contained in the note of our Secretary of State, I can see no reason why the United States should not be satisfied as that principle was communicated in the exchange of notes as official documents.

Mr. KING. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Utah?

Mr. SWANSON. I yield.

Mr. KING. Does the Senator think that without the notes the right of self-defense is preserved in the treaty itself?

Mr. SWANSON. I do; but I want to say that they went further than that. While it was implied, yet to have no doubt or equivocation about it they interpreted the official communication of our Secretary of State transmitting that speech as making it clear and specific and without implication.

Mr. McLEAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Connecticut?

Mr. SWANSON. I do.

Mr. McLEAN. The Senator, of course, is aware that Mr. Briand in his reply——

Mr. SWANSON. I will reach that question in a few moments and when I get to it the Senator can ask me his question. I will come to the reply of Mr. Briand in a moment and will discuss it. I am now discussing Mr. Chamberlain's reply. If the Senator intends to say that Mr. Chamberlain's reply does not retain the right of absolute and unlimited self-defense, I should be glad to comment on that at this time. But why talk about the Briand letter when we are discussing Mr. Chamberlain's letter? I will get to the Briand letter a little later.

Mr. McLEAN. Mr. Chamberlain's reply does a great deal more than that.

Mr. SWANSON. He did not reply any further on the matter of self-defense.

Mr. McLEAN. He reserves the right to do anything he cares to do.

Mr. SWANSON. I will get to that in due time. There is no use diverting me from this specific argument.

Mr. REED of Missouri. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Missouri?

Mr. SWANSON. I yield.

Mr. REED of Missouri. I beg to suggest that we at least ought to be able to discuss this article of perpetual peace in a peaceful way. [Laughter.]

Mr. SWANSON. I will do so if the Senator from Missouri will restrain himself. The only difficulty that may arise from discussing it in a peaceful way will emanate from the Senator from Missouri himself. I am glad he is apparently in a peaceful state of mind this morning.

Mr. REED of Missouri. If I am the only belligerent in this case, then when I pass from the world the earth will have peace, and the genial influence of the Senator from Virginia will look after all the future.

Mr. SWANSON. Oh, no, Mr. President. The Senator is disposed to be very belligerent. He preaches peace in discussion, but he is very vigorous in his blows, and he knows it.

I am discussing Chamberlain now and not somebody else. I will get to the others later. I ask anybody to read Chamberlain's reply and say that he does not understand completely that the letter transmitted by our Secretary of State with his speech reserves the right of complete self-defense. Mr. Chamberlain's letter goes further and reserves the Locarno treaty, making it conditional on the covenant of the League of Nations and neutrality treaties as well, and he brings in article 10, which has been read, in which he reserves the right to exercise his own will and his own judgment—that is, the British will and judgment—in some special affairs where they have a vital interest and which the treaty would not affect.

Mr. McLEAN. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Connecticut?

Mr. SWANSON. I yield.

Mr. McLEAN. He also suggests that we have some vital interests which, for some reason or other, our Secretary of State forgot.

Mr. SWANSON. I will get to that later.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Idaho?

Mr. SWANSON. In just a moment. In making that declaration, reserving the special interests for Great Britain where they have a vital interest, it was understood that the United States would, in pursuance of its traditional country's policy, insist that it had special interests in certain territories that it would not waive. I yield now to the Senator from Idaho.

Mr. BORAH. The Senator from Connecticut said that our Secretary of State "forgot." The Secretary of State did not forget the matter at all. It was in his mind at all times, and he conserved in a manner in which he thought it was most effective.

Mr. McLEAN. I was putting the most charitable interpretation on it that I could.

Mr. SWANSON. I will ask to have inserted in my remarks, without reading, as the Senate has had it repeatedly read, the

remaining portion of the reply of Mr. Chamberlain in connection with that statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

The matter referred to is as follows:

The point is one of importance because of its bearing on the treaty engagements by which His Majesty's Government are already bound. The preservation of peace has been the chief concern of His Majesty's Government and the prime object of all their endeavors. It is the reason why they have given ungrudging support to the League of Nations and why they have undertaken the burden of the guaranty embodied in the Locarno treaty. The sole object of all these engagements is the elimination of war as an instrument of national policy, just as it is the purpose of the peace pact now proposed. It is because the object of both is the same that there is no real antagonism between the treaty engagements which His Majesty's Government have already accepted and the pact which is now proposed. The machinery of the covenant and of the treaty of Locarno, however, go somewhat further than a renunciation of war as a policy, in that they provide certain sanctions for a breach of their obligations. A clash might thus conceivably arise between the existing treaties and the proposed pact unless it is understood that the obligations of the new engagement will cease to operate in respect of a party which breaks its pledges and adopts hostile measures against one of its cocontractants.

For the Government of this country respect for the obligations arising out of the covenant of the League of Nations and out of the Locarno treaties is fundamental. Our position in this regard is identical with that of the German Government as indicated in their note of the 27th of April. His Majesty's Government could not agree to any new treaty which would weaken or undermine these engagements on which the peace of Europe rests. Indeed, public interest in this country in the scrupulous fulfillment of these engagements is so great that His Majesty's Government would for their part prefer to see some such provision as article 4 of the French draft embodied in the text of the treaty. To this, we understand, there will be no objection. Mr. Kellogg has made it clear in the speech to which I have drawn attention that he had no intention by the terms of the new treaty of preventing the parties to the covenant of the league or to the Locarno treaty from fulfilling their obligations.

The language of article 1, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind your excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions can not be suffered. Their protection against attack is to the British Empire a measure of self-defense. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests, any disregard of which by a foreign power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government.

Your excellency will observe that the detailed arguments in the foregoing paragraphs are expressed on behalf of His Majesty's Government in Great Britain. It will, however, be appreciated that the proposed treaty, from its very nature, is not one which concerns His Majesty's Government in Great Britain alone, but is one in which they could not undertake to participate otherwise than jointly and simultaneously with His Majesty's Governments in the Dominions and the Government of India. They have, therefore, been in communication with those Governments, and I am happy to be able to inform your excellency that as a result of the communications which have passed it has been ascertained that they are all in cordial agreement with the general principle of the proposed treaty. I feel confident, therefore, that on receipt of an invitation to participate in the conclusion of such a treaty, they, no less than His Majesty's Government in Great Britain, will be prepared to accept the invitation.

Mr. SWANSON. What I wish to emphasize as contained in the reply is, first, the right of self-defense, free and unlimited; second, that the covenant of the League of Nations and the Locarno treaties are not interfered with; third, that Great Britain has certain spheres where she has a special interest as to which she did not intend, as she thought she ought to give expression, to grant the right of interference by any government, stating that she would take it practically as an unfriendly act; fourth, she concedes that we have interests under the Monroe doctrine in which we would not tolerate any interference. Having clearly in mind what that reply contained, which I will discuss further a little later, I will proceed now to read the other notes.

It will be noted that the British Government suggested that the Dominions and self-governing colonies of the British Empire should be requested to join in the proposed multilateral treaty as it affected, not Great Britain alone, but the entire empire. This suggestion was followed and their replies were subsequently received by the Secretary of State.

On May 26, 1928, the Japanese Government replied. The pertinent portion of the reply is as follows:

The proposal of the United States is understood to contain nothing that would refuse to independent states the right of self-defense, and nothing which is incompatible with the obligations of agreements guaranteeing the public peace, such as are embodied in the covenant of the League of Nations and the treaties of Locarno. Accordingly, the Imperial Government firmly believe that unanimous agreement on a mutually acceptable text for such a treaty as is contemplated is well capable of realization by discussion between the six powers referred to, and they would be happy to collaborate with cordial good will in the discussions with the purpose of securing what they are persuaded is the common desire of all the peoples of the world, namely, the cessation of wars and the definite establishment among the nations of an era of permanent and universal peace.

Now, I want Senators to remember that the Japanese Government had before it the speech of Secretary Kellogg and his letter communicating it, in which he distinctly stated that the right of self-defense was not in any way interfered with and the Japanese Government saw no occasion for a reservation to the treaty to accomplish that purpose. There is one of the great governments of the world that is satisfied with the note and satisfied with the speech of Secretary Kellogg on the question of self-defense.

On May 30 the Government of New Zealand gave a favorable reply to the proposal.

On May 30 the Irish Government made its reply, which was in part as follows:

Sharing the view expressed by the Secretary of State of the United States in his speech before the American Society of International Law that nothing in the draft treaty is inconsistent with the covenant of the League of Nations, the Government of the Irish Free State accept unreservedly the invitation of the United States Government to become a party to the treaty jointly with the other states similarly invited.

On May 30 the Canadian Government gave its reply, which is in part as follows:

The question whether the obligations of the covenant of the league would conflict in any way with the obligations of the proposed pact has been given careful consideration. His Majesty's Government in Canada regards the league, with all its limitations, as an indispensable and continuing agency of international understanding, and would not desire to enter upon any course which would prejudice its effectiveness. It is, however, convinced that there is no conflict either in the letter or in the spirit between the covenant and the multilateral pact, or between the obligations assumed under each.

On June 2, 1928, the Commonwealth of Australia gave its favorable reply.

On June 15, 1928, the Government of the Union of South Africa sent its reply to the proposal. In this reply its acquiescence is based as follows:

(a) That it is not intended to deprive any party to the proposed treaty of any of its natural right of legitimate self-defense;

(b) That a violation of any one of the parties of any of the provisions of the proposed treaty will free the other parties from obligation to observe its terms in respect of the party committing such violation; and

(c) That provision will be made for rendering it quite clear that it is not intended that the Union of South Africa, by becoming a party to the proposed treaty, would be precluded from fulfilling as a member of the League of Nations its obligations toward the other members thereof under the provisions of the covenant of the league.

As I said, Secretary Kellogg had received these notes and had sent his note and speech. On June 23 he submitted the proposed draft, which is practically identical with the draft before the Senate to-day for ratification. The only difference between that draft and the original draft submitted, to which these replies were made, is contained in the preamble. In the preamble of the second draft is found this provision:

That any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty.

That is the only difference between the second draft of the pact and the first draft of the pact. The contention of France that a nation that violates the treaty could not under any circumstances claim its protection was agreed to.

There has been something said about Secretary Kellogg not making it clear in regard to the absolute right of self-defense.

I call the attention of the Senator from Connecticut [Mr. McLEAN], as I said I would do when I got to this point, to this fact. On April 28, 1928, the Secretary of State in his speech did use that expression which seems to be worrying the Senator from Connecticut, as follows:

> Self-defense. There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign State and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense.

Mr. McLEAN. He used the expression "defend its territory" there.

Mr. SWANSON. I am referring to his address of April 28, 1928.

Mr. McLEAN. Later, on June 23, 1928, in his definition of the right of self-defense, Mr. Kellogg insists on the right to defend its territory.

Mr. SWANSON. On June 23, in a note to a number of powers, the Secretary of State reiterated the expression contained in his address of April 28. He said:

> It believes that the right of self-defense is inherent in every sovereign State and implicit in every treaty.

If it be inherent in every sovereign State, if it is an inalienable right, nothing that Secretary Kellogg could say and nothing that I could say and nothing that anybody else could say could take away or lessen an inherent, inalienable right. If I understand the meaning of the term "inherent" and "inalienable" right, it means something that belongs and inheres to the subject.

Mr. McLEAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Connecticut?

Mr. SWANSON. I will yield in a moment.

Mr. Kellogg goes further and says:

> No specific reference to that inalienable attribute of sovereignty is therefore necessary or desirable.

That expression is contained in his note to a number of foreign governments.

Mr. McLEAN. If the Secretary had left his definition as it has just been read by the Senator from Virginia, I would not have a criticism of the treaty, but he goes on and limits the right of self-defense in the first paragraph of his note to the various governments. In the very communication from which the Senator is reading the Secretary of State was not satisfied to let his definition alone—that the right of self-defense meant any right which a nation might choose to suggest as properly one of self-defense—but in that very first paragraph where he defines that right he limits it to the defense of territory.

Mr. SWANSON. If the Senator will permit me, the text speaks for itself. In two or three sentences he says that self-defense is an inalienable right, implicit in every treaty.

The Senator's contention is that if an illustration such as the defense of territory be used, which is one of the forms of self-defense, it eliminates the broader meaning that includes every other form of self-defense. I say it does not. I say the Secretary takes the position that self-defense is an inalienable and inherent right, implicit in every treaty, and that every other government accepted that interpretation.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Idaho?

Mr. SWANSON. I do.

Mr. BORAH. In the last reference of the Secretary of State made to the subject of self-defense in his negotiations he said:

> The right of self-defense is inherent in every sovereign state and implicit in every treaty. No specific reference to that inalienable attribute of sovereignty is therefore necessary or desirable.

That is the last statement he ever made in regard to it. That was made after all other discussion had taken place.

Mr. SWANSON. Mr. President, I just read that, and stated that it was made on the 23d of June, 1928, by the Secretary of State in his note to a number of foreign governments, and was a repetition of a statement made by him in a speech on the 28th of April.

Mr. REED of Missouri. In a speech which was transmitted to foreign governments.

Mr. SWANSON. It was so transmitted, and is his final judgment and is without limitation.

Subsequently it was determined by all parties to the negotiation that in addition to permitting the self-governing members of the British Empire to be original signatories of the treaty, it was desirable that all of the nations that were parties to the various Locarno treaties should also be made original signatories, and notes were addressed to them for this purpose.

On June 23 the United States Government made a request to be informed by the various governments which were to be the original signatories to the treaty to inform it at as early a date as might be convenient whether they were willing to join with the United States and other similarly disposed governments in signing a definitive treaty for the renunciation of war in the form then transmitted. Accompanying this note was the address of Secretary Kellogg of April 28 interpreting the proposed treaty. The text of this treaty was similar to the one first transmitted by Secretary Kellogg, the only important addition to the treaty submitted being in the preamble, which contained this provision, which was not in the provisions of the first treaty submitted:

> That any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty.

The French contention that the benefits of the treaty should not accrue to any government that violated it was accepted and inserted in the treaty.

On July 14, 1928, the French Government replied, giving its assent to the new proposal upon the following interpretation:

> The Government of the Republic is happy, moreover, to take note of the interpretations which the Government of the United States gives to the new treaty with a view to satisfying the various observations which had been formulated from the French point of view.

These interpretations may be summarized as follows:

> Nothing in the new treaty restrains or compromises in any manner whatsoever the right of self-defense. Each nation in this respect will always remain free to defend its territory against attack or invasion; it alone is competent to decide whether circumstances require recourse to war in self-defense.

Mr. McLEAN. Mr. President, the reference there is to territory again.

Mr. SWANSON. That is included. It is one illustration included in the broader term.

Mr. McLEAN. No; I think not.

Mr. SWANSON. I do not think giving one illustration, being narrower in scope, eliminates a broader construction. I evidently take a different view of the interpretation from that which the Senator from Connecticut takes.

Mr. McLEAN. Is the Senator reading from Mr. Briand's communication?

Mr. SWANSON. I am.

Mr. McLEAN. Mr. Briand knew what he was about.

Mr. SWANSON. M. Briand continues:

> Secondly, none of the provisions of the new treaty is in opposition to the provisions of the covenant of the League of Nations nor with those of the Locarno treaties or the treaties of neutrality.
>
> Moreover, any violation of the new treaty by one of the contracting parties would automatically release the other contracting parties from their obligations to the treaty-breaking state.
>
> Finally, the signature which the Government of the United States has now offered to all the signatory powers of the treaties concluded at Locarno and which it is disposed to offer to all powers parties to treaties of neutrality, as well as the adherence made possible to other powers, is of a nature to give the new treaty, in as full measure as can practically be desired, the character of generality which accords with the views of the Government of the Republic.

Mr. REED of Missouri. Mr. President——

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Missouri?

Mr. REED of Missouri. If I can interrupt the Senator in a peaceful way——

Mr. SWANSON. It is difficult for the Senator to do that, but I will trust him this time.

Mr. REED of Missouri. Very well. The suspicion the Senator entertains of me is probably not equaled by the suspicion that any foreign government has of any other government, but if we can not discuss peaceful measures in a peaceful way, I do not know what would happen if we met on the open field where we were in a conflict. I will simply ask the question to get the Senator's view of record in the Senate; I do not care to debate it now, and I may never care to do so. When the French Government states, "We interpret this treaty to mean that a country is always free to defend its territory," and further says the right of self-defense is inalienable, is it the Senator's view that words "to defend its territory" are not a limitation by the French Government of its understanding of the scope of self-defense?

Mr. SWANSON. I do not think so, because it says:

Nothing in the new treaty restrains or comprises in any manner whatsoever the right of self-defense.

It does not limit it to the right to defend territory merely; that is simply an illustration of a specific case of self-defense, and does not eliminate all other forms of self-defense.

Mr. McLEAN. O Mr. President, if the Senator will read the next line I think he will have a different impression. It is as follows:

Each nation in this respect will always remain free to defend its territory.

Mr. SWANSON. It does not say "in no other respect." The Senator from Connecticut would read it as if it said "in this and no other respect."

Mr. McLEAN. In respect of self-defense.

Mr. SWANSON. "In this and no other respect," the Senator reads it.

Mr. McLEAN. Oh, no.

Mr. SWANSON. That inference is not there.

Mr. REED of Missouri. Mr. President, this ought not to be a matter of trying to sustain a position, but it ought to be an effort to ascertain the danger point of this treaty if any there be. I hardly think the Senator will say that there is no significance in the fact that the French Government not only once but I think two or three times—I have not the document before me—stated that the right to defend territory is reserved; that is, to defend the property, the territories of a country.

If the French Government had meant to give the interpretation of the treaty a broader scope, to include the right to defend the interest of the nation anywhere and at all times, naturally it would have so stated instead of limiting it to the defense of territory; it would have adopted another method and would have said, "the right of self-defense is implicit and inherent and is not affected."

I say to the Senator—and I do not say it in a controversial spirit, but I say it in the spirit of this treaty—that the French Government can very well hereafter claim that its definition of the right of self-defense, which was communicated to all of the powers, was that that right was the right to defend territory from attack.

If the Senator from Virginia will pardon me for a moment further, between that and the British claim of self-defense, which it has asserted for centuries, there is the widest possible gulf. Great Britain has asserted the right to seize the ships of neutral states upon the high seas if those ships were carrying to Great Britain's enemy anything that was ordinarily in time of war regarded as contraband or anything which she saw fit to declare contributed to the welfare of her enemies. She applied that rule in the last war and practically declared everything to be contraband that was going to Germany or to any other country for transshipment to Germany. She did that upon the ground of self-defense. I am not at present quarreling with her, but there is a great difference between self-defense as thus construed and the term used by the French Government, "the defense of territory."

Mr. SWANSON. Mr. President, the best reply I can make is to quote the statement that France itself made, as follows:

Nothing in the new treaty restrains or compromises in any manner whatsoever the right of self-defense.

Then it sets forth one method of self-defense, namely, the right to defend territory. At one time it was desired to limit it to territory, but that idea was repudiated.

Now let me read what the Irish Free State says. The Irish people have a great deal of sense, they have encountered trouble of various kinds and do not desire to get into any more. Here is what that Government said when it accepted this treaty; it is its interpretation of the treaty:

As I informed you in my note of the 30th of May, the Government of the Irish Free State were prepared to accept unreservedly the draft treaty proposed by your Government on the 13th of April, holding, as they did, that neither their right of self-defense nor their commitments under the covenant of the League of Nations were in any way prejudiced by its terms.

What can be more plain than that unlimited interpretation of the Irish Free State?

On July 15, 1928, the Italian Government replied, and their reply I will ask to have inserted in my remarks at this point.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

The Royal Government, which has attentively examined the last draft of a treaty for the elimination of war proposed by the United States, takes note of and agrees with the interpretation of the said treaty which the Government of the United States sets forth in the above-mentioned note of June 23 last, and on this premise declares that it is disposed to proceed to the signature thereof.

On July 16, 1928, the Canadian Government agreed to accept the treaty as changed.

On July 17, 1928, the Belgian Government replied as follows:

The text prepared by the Government of Washington commands the full approbation of the Royal Government. This Government notes with satisfaction the explanations and interpretations contained in your excellency's letter. It is pleased to note that the proposed pact will maintain unimpaired the rights and obligations arising from the covenant of the League of Nations and from the Locarno agreements which constitute for Belgium fundamental guaranties of security.

The Polish Government replied, on July 17, 1928, as follows:

The principles which Mr. Kellogg has emphasized in the draft above mentioned conforming entirely with the objectives that Poland never ceases to pursue in its foreign policy, I have the honor to communicate to you the fact that the Polish Government accepts the text of the above-stated pact and declares itself ready to affix its signature thereto.

As regards the interpretation of the pact in question which you have been good enough to give in your note of June 23, and which confirms the fact that the pact is destined to insure the consolidation of peaceful relations between states on the basis of the existing international obligations, the Polish Government takes note of the following statements:

(1) That the pact does not affect in any way the right of legitimate defense inherent in each state.

(2) That each state signatory to the pact which may endeavor to realize its national interests by means of war shall be deprived of the benefits of the said pact.

(3) That no incompatibility exists between the stipulations of the pact against war and the obligations deriving from the covenant of the League of Nations for states which are members of the latter. This statement results from the very fact that the pact proposed by Mr. Kellogg stipulates the renunciation of war as an instrument of national policy.

A clear, positive, and specific condition. Inherent and complete self-defense is its interpretation of what the note, speech and all contain.

On July 18 the British Government replied to the new proposal, as follows:

SIR: I am happy to be able to inform you that after carefully studying the note which you left with me on the 23d of June, transmitting the revised text of the draft of the proposed treaty for the renunciation of war, His Majesty's Government in Great Britain accept the proposed treaty in the form transmitted by you and will be glad to sign it at such time and place as may be indicated for the purpose by the Government of the United States.

My Government have read with interest the explanations contained in your note as to the meaning of the draft treaty, and also the comments which it contains upon the considerations advanced by other powers in the previous diplomatic correspondence.

You will remember that in my previous communication of the 19th of May I explained how important it was to my Government that the principle should be recognized that if one of the parties to this proposed treaty resorted to war in violation of its terms, the other parties should be released automatically from their obligations toward that party under the treaty. I also pointed out that respect for the obligations arising out of the covenant of the League of Nations and of the Locarno treaties was the foundation of the policy of the Government of this country, and that they could not agree to any new treaty which would weaken or undermine these engagements.

His Majesty's Government in Great Britain do not consider, after mature reflection, that the fulfillment of the obligations which they have undertaken in the covenant of the League of Nations and in the treaty of Locarno is precluded by their acceptance of the proposed treaty. They concur in the view enunciated by the German Government in their note of the 27th of April that those obligations do not contain anything which could conflict with the treaty proposed by the United States Government.

As regards the passage in my note of the 19th of May relating to certain regions of which the welfare and integrity constitute a special and vital interest for our peace and safety, I need only repeat that His Majesty's Government in Great Britain accept the new treaty upon the understanding that it does not prejudice their freedom of action in this respect.

I am entirely in accord with the views expressed by Mr. Kellogg in his speech of the 28th of April that the proposed treaty does not restrict or impair in any way the right of self-defense, as also with his opinion that each state alone is competent to decide when circumstances necessitate recourse to war for that purpose.

In the light of the foregoing explanations, His Majesty's Government in Great Britain are glad to join with the United States and with all other governments similarly disposed in signing a definitive treaty for

the renunciation of war in the form transmitted in your note of the 23d of June. They rejoice to be associated with the Government of the United States of America and the other parties to the proposed treaty in a further and signal advance in the outlawry of war.

On July 18, 1928, the Governments of India and Australia gave their assent to the new draft.

On the same day the Government of New Zealand gave its assent to the new draft.

On July 18, 1928, the Union of South Africa gave its consent in the following terms:

On behalf of His Majesty's Government in the Union of South Africa I have the honor to inform you that my Government have given their most serious consideration to the new draft treaty for the renunciation of war, submitted in your note of 23d of June, and to the observations accompanying it.

My Government note with great satisfaction (a) that it is common cause that the right of legitimate self-defense is not affected by the terms of the new draft; (b) that, according to the preamble, any signatory who shall seek to promote its national interests by resort to war shall forfeit the benefits of the treaty; and (c) that the treaty is open to accession by all powers of the world.

My Government have further examined the question whether the provisions of the present draft are inconsistent with the terms of the covenant of the League of Nations by which they are bound, and have come to the conclusion that this is not the case, and that the objects which the League of Nations was constituted to serve can but be promoted by members of the League of Nations participating in the proposed treaty.

On July 20, 1928, the Czechoslovakian Government gave its consent.

On July 20, 1928, the Japanese Government approved the new draft and expressed its willingness to sign it. In its letter transmitting its acceptance it used this expression:

You proceed to reenforce in detail the explanations made by the Secretary of State in his speech of the 28th of April, 1928.

On the 27th day of August last the different governments who were to be the original signatories to the treaty attached their signatures without further exchange of official documents or speech.

Mr. President, with all of these communications before it, with all of these understandings and exchanges of notes—and I have read the substance of all of them that were exchanged prior to the 27th of August, when it was signed—the treaty was signed by these nations without further exchange of notes or official documents or speeches. I contend that at that time the status of the treaty was fixed. Any amendments, changes, or suggestions, subsequently made, to the effective, must be concurred in by all other nations. The treaty was then fixed in its interpretations, in its language, its draft, and notes.

Now, Mr. President, I will try to discuss what this discloses.

The first question presented to us for consideration is: Do these official documents, official interpretations, and official reservations constitute a part of the treaty, or is the treaty to be construed only by the language used in the treaty?

Some advocates of the treaty insist that all these official documents, official interpretations, and official reservations and conditions do not constitute a part of the treaty, asserting that they are extraneous, and should not be considered in giving a proper interpretation of the treaty. I can not agree with any such contention. The universal rule in interpreting such documents is to consider all the transactions that occurred and the understandings arrived at before the signatures were attached, and there is no excuse in this case to deviate from this well-established rule. Besides, it would be a gross breach of good faith to ignore the interpretations given to the treaty by our Secretary of State, whether in his open declarations or his silent acquiescence in the interpretations given by other governments. To obtain the consent of a nation to the treaty with official interpretations of it, and then permit the nation to attach its signature upon expressed conditions, and then repudiate these, would be such bad faith on the part of this Government as to bring it into great disrepute. This Government, noted for its fair and frank dealings, which it has scrupulously observed in all its diplomatic relations, will never consent to a transaction so reprehensible. It would be better for this treaty to be defeated than for this Government to have its honor and reputation so stained.

Thus, Mr. President, we are compelled to interpret this treaty by giving full import to all the official communications, interpretations, reservations, and conditions insisted upon by the various governments when their signatures were attached. Secretary Kellogg insists that the treaty would have had the same construction and effect if there had been no exchange of notes. The interpretations and reservations contained in the notes only made more clear and specific the proper interpretation of the treaty. There can be no special reservations or interpretations for one nation that do not accrue to all. The treaty must be uniform to all who were the original signatories; and all that occurred and all the understandings arrived at prior to the signatures must be considered in interpretating the treaty and belong to all these nations alike.

Mr. President, bearing all this in mind, we will now proceed in a just and fair way to ascertain the meaning of this treaty and what it will accomplish toward the prevention of war. We will first determine what wars are permissible under this treaty.

The Secretary of State, in his speech of April 28, 1928, which was communicated to all the governments concerned as his interpretation of the pact, stated:

There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense.

Also, in the body of the note of June 23, transmitting the speech of April 28, and the proposed draft of the treaty to the various governments, the Secretary of State said, speaking for the United States Government:

It believes the right of self-defense is inherent in every sovereign state and implicit in every treaty. No specific reference to that inalienable attribute of sovereignty is therefore necessary or desirable.

This interpretation was concurred in by every nation in official communications to our Secretary of State.

In the same speech the Secretary of State, in speaking of the power of any government to exercise its inalienable right of self-defense, stated:

It alone is competent to decide whether circumstances require recourse to war in self-defense.

This interpretation was concurred in by all signatories of the treaty.

Thus, it is universally acknowledged that all wars of self-defense are excluded from the operation of this treaty, and every nation determines for itself the question of self-defense. It should be noted that this question of self-defense is not limited to territory, but includes anything that any nation may determine is vital for its protection and self-defense. The wars excluded from the operations of this treaty by this interpretation are as limitless as the imagination or the ambition of nations may desire. It practically excludes from the operations of this treaty almost any war that has occurred in the last century. I hardly recall a war that has occurred during this period that the governments engaged did not claim to be a war of self-defense. Every government that engaged in the World War insisted it was waged on their part for self-defense. Thus, this treaty would have been wholly ineffective in restraining any of the governments that participated in the World War. This interpretation, given by the Secretary of State and acquiesced in by all the signatories, permits governments desirous of engaging in war to be unrestrained by this treaty, because all they will have to do is to claim it is a war of self-defense, and the interpretations of the treaty make them alone the judge of this question. Its significance as a solemn peace pact by these interpretations is seriously impaired.

Mr. REED of Missouri. Mr. President——

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Missouri?

Mr. SWANSON. I do.

Mr. REED of Missouri. Then, if this treaty would not have prevented the great World War, and would not have prevented any of the wars of the last 100 years, the sole benefit of the treaty must be merely that it is an expression of good will and of intent, and that is about all.

Mr. SWANSON. That is what I believe it is, to be frank with the Senator.

Mr. REED of Missouri. I believe it is, too.

Mr. SWANSON. That is all I believe it is. I believe it is an expression of a desire in your heart for peace. Whether it is genuine or not, is for you to judge and the other nations to judge.

Mr. REED of Missouri. In other words, we are to exchange a sort of international kiss.

Mr. SWANSON. Well, we had better exchange kisses than blows.

Mr. REED of Missouri. Sometimes they lead to blows.

Mr. BRUCE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Maryland?

Mr. SWANSON. I do.

Mr. BRUCE. Does not the Senator, however, feel that some of the nations that have signed the pact have signed it with their tongues in their cheeks?

Mr. SWANSON. I do not know where there tongues were, but I know their pens have expressed what they thought about it.

Mr. BRUCE. Has the Senator read the comments of Mussolini in the Italian Parliament on the treaty?

Mr. SWANSON. I have not read his speech, but I have read the notes of the Italian Government, which are its official communications as to what it is willing to do.

Mr. BRUCE. It is true that the Italian Government has passed through the formal process of signing this treaty; but when we go a little outside of that process to ascertain precisely in what spirit the treaty was signed by Italy all the evidence, to my mind, shows that the signing was done in the most cynical and skeptical spirit, without any sort of faith in its efficacy so far as the Italian Government was concerned.

Mr. WALSH of Montana. Mr. President, may I say just a word here?

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Montana?

Mr. SWANSON. I yield.

Mr. WALSH of Montana. I do not suppose that anyone on this floor thinks that the Government of the United States was to any extent whatever insincere in negotiating or in signing this treaty or that the Senate of the United States will be insincere if it shall ratify the treaty. I have no doubt that every American citizen, with possibly very few exceptions, will concede that the United States enters into this treaty in perfectly good faith, with every purpose scrupulously to observe its conditions. If we indulge such generous sentiments concerning our own Government, it seems to me that we ought to be rather cautious about indulging suspicions that other governments are less honest and less purposeful and less sincere than our own.

My attention was called to the remark made by Premier Mussolini to which the Senator from Maryland refers; and I do not undertake to say, in view of the remark made by that distinguished official of the Italian Government, that there is not some justification for such suspicions as the Senator from Maryland may indulge.

I can not, however, think that the Government of Germany, for instance, the Government of France, or the Government of Great Britain, whose peoples I undertake to say have a hatred of war quite as acute as that entertained by our own people, are not looking for some substantial results from the solemn declaration of their governments and of the governments of the world that they do not propose hereafter to resort to war for the settlement of international controversies.

Mr. BRUCE. Mr. President, will the Senator from Virginia allow me for just a minute?

Mr. SWANSON. I do not like to get into a discussion about Mussolini.

Mr. BRUCE. The Senator has yielded to the Senator from Montana to reply to me, and I thought possibly he would allow me to make a rejoinder.

Mr. SWANSON. I yield to the Senator. I have detained the Senate longer than I had expected, and I should prefer not to have a discussion of Mussolini and what people have said. I have tried to discuss this treaty with the official notes given by a government in a serious official way as its interpretation of what it purported to do. Any speeches that are made subsequently in ridicule of it to my mind are not pertinent to an interpretation of this treaty, except as to the spirit in which the government concerned may have signed it. I yield to the Senator, however.

Mr. BRUCE. I had no desire to say anything further about Mussolini. I wish simply to say that I think that the Senator from Montana was quite beside the mark when he imputed to me a disposition to question the sincerity of our Government in proposing this multilateral pact. The trouble with our Government in dealing with foreign nations has always been that it is too sincere, if that can ever be, and that its sincerity is by no means always fully reciprocated by other nations when the play of diplomatic intrigue and finesse commences. The Senator will recollect that our fingers were pretty badly burned when we attempted to enter into a satisfactory naval disarmament agreement with even such a civilized and highly enlightened power as Great Britain.

Mr. SWANSON. Mr. President, I hope the Senator will not precipitate a naval debate in the midst of my remarks.

Mr. BRUCE. I simply wanted to say that I was not imputing any insincerity to our Government.

Mr. SWANSON. I am glad to give the Senator an opportunity to make his disclaimer.

Mr. BRUCE. I would not want to be put in that position for a moment.

Mr. SWANSON. Mr. President, I can not yield further.

Mr. President, the next wars that are to be excluded from the operations of this treaty are such as might arise under the covenant of the League of Nations. The Secretary of State, speaking for this Nation to all the nations that have attached their signatures to this treaty, expressly excluded from its operations all obligations that have been assumed under the covenant by all members of the League of Nations and the signatories; members of the league also specifically reserved the obligations of the league. Let us examine the covenant of the League of Nations and see what wars under its provisions are permissible and to which this treaty would not apply. In article 10 of the covenant the territorial integrity and existing political independence of all members of the league is guaranteed, and provision is made under certain conditions for the council of the league and the members of the league to take action to fulfill the obligations assumed under this section. Thus all wars for this purpose would be unaffected by the provisions of this treaty. Article 11 of the covenant provides:

> Any war or threat of war, whether immediately affecting any of the members of the league or not, is hereby declared a matter of concern to the whole league, and the league shall take any action that may be deemed wise and effectual to safeguard the peace of nations.

This opens up for the decision of the League of Nations a broad and undefined field of activity in use of force or of war as it may determine. It should be noted that this activity of the league is not confined to the members of the league, but includes all nations that are not members of the league. Thus this treaty would not prohibit the 55 nations of the world who are members of the league from having concerted action of force or war against any nation, whether a member of the league or not. All the activities of the league under article 11 of the covenant are permissible under this treaty.

Article 13 of the covenant provides that in case a member of the league fails to comply with the decision of a court or the award of a tribunal to which a matter has been referred, then the council shall propose what steps shall be taken to give effect to such judgment or award. Any war that might arise under this article would be outside the operations of this treaty.

Article 16 of the covenant provides that in case any member of the league resorts to war under articles 12, 13, or 15 of the covenant, it shall ipso facto be deemed to have committed an act of war against the other members of the league, and the members of the league undertake immediately to subject this nation to a severance of trade and financial relations, the prohibition of all intercourse between the nationals of the covenant-breaking state and the nationals of any other state, whether a member of the league or not. It further provides that it shall be the duty of the council in such cases to recommend to the several nations concerned what effective force—military, naval, and air—the members of the league shall severally contribute to the armed forces to be used to protect the covenants of the league. This section further provides that the members of the league will mutually support one another in resisting any special measure aimed at one of their number by the covenant-breaking state. Under this article of the covenant all wars which might arise under it are excluded from the operations of this treaty.

A question has arisen in case the league should declare an economic blockade against any one of its members under this article and seek to enforce it by military force, to what extent would the United States be bound to acquiesce in such action under this treaty. As all obligations of the league are excluded from the operations of this treaty the United States would be as free morally and legally to act in such case as it might see proper, precisely as if this treaty had never been entered into. Our conduct and action would be as free and untrammelled as it now is; the treaty would not affect us in this respect in any way whatsoever. Under this pact the United States assumes no moral or legal obligation whatsoever contained in any other treaty, covenant, or agreement. Its obligations are absolutely limited to this treaty.

Mr. President, the League of Nations is left unaffected by this treaty. It does not modify, restrain, or alter it in any respect. The obligations of the league are left unaffected by this treaty. Therefore the friends of the League of Nations can support this treaty without apprehension that it will in any way interfere with the league and its activities and undertakings.

Mr. President, the written agreements or the treaties of Locarno are also expressly excluded from the operations of this treaty. The first of these treaties, and the most far-reaching, signed by Germany, Belgium, France, Great Britain, and Italy guarantees the present boundaries of these countries in the west and the inviolability of the demilitarized zone in the Rhine as defined in the treaty of Versailles. The second class of these

treaties are arbitration treaties between Great Britain and France, Germany and Belgium, Germany and Poland, Germany and Czechoslovakia, which if complied with would prevent war, but in case of noncompliance might result in war, which, if once started, would be far extended. There is also a treaty somewhat similar to but a little different between Poland and Czechoslovakia. The third class of these treaties consists of two guaranty treaties between France and Poland and between France and Czechoslovakia in which France agrees to give Poland and Czechoslovakia immediate assistance in the event of unprovoked aggression against them by Germany.

The ninth document is a letter sent after the signing of the treaties to the German delegation assuring Germany that the interpretation of article 16 of the covenant of the League of Nations is as follows:

> * * * the obligations resulting from the said article on the members of the league must be understood to mean that each state member of the league is bound to cooperate loyally and effectively in support of the covenant and in resistance to any act of aggression to an extent which is compatible with its military situation and takes its geographical position into account.

All of these agreements were conditioned upon the entrance of Germany into the League of Nations and were to be exercised in pursuance of the obligations of the covenant. Thus, all wars which might arise under the Locarno treaties and understandings may be considered as exclusions under the covenant of the League of Nations also, as by their terms and texture they are really made a part of the covenant. These Locarno treaties and understandings are left unaffected by this treaty. Thus, those in favor of the Locarno agreements and are hopeful of peaceful results therefrom can support this treaty and have no apprehension that these agreements are in any way interfered with by this treaty.

Mr. President, these exclusions from the operations of this treaty are clear, definite, and certain. There is nothing that can be productive of misunderstandings. The proponents of this treaty have wisely excluded from its provisions all the obligations assumed by nations in the Locarno agreements and the covenant of the League of Nations. These instrumentalities of peace are left untouched and unchanged by this treaty. The proponents of this treaty concur that these agencies of peace should not be interfered with, and such force as is permitted under them is designed for the prevention of war. I desire to congratulate the proponents of this treaty for their cordial and thorough indorsement of the League of Nations, its work, and purposes.

Mr. President, this treaty makes other exclusions of war from its provisions. In the reply of the British Government on May 10, 1928, through Mr. Chamberlain, the Foreign Secretary, to Secretary of State Kellogg, there is this language:

> The language of article 1, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind your excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions can not be suffered. Their protection against attack is to the British Empire a measure of self-defense. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests any disregard of which by a foreign power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government.

Thus Great Britain clearly reserves to herself certain regions of the world in which she proposes to permit no interference from anyone, and where she claims a special and vital interest and to do as her will and judgment may dictate. The British Government in its final acceptance of the treaty specifically states:

> As regards the passage in my note of the 19th May relating to certain regions of which the welfare and integrity constitute a special and vital interest for our peace and safety, I need only repeat that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect.

In order to justify her claim of right thus asserted by the British Government should be noted the following reference to the United States:

> The Government of the United States have comparable interests any disregard of which by a foreign power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government.

Thus Great Britain asserts she understands that the United States intends to maintain the position that this treaty does not in any way affect the Monroe doctrine and which the United States expects to adhere to despite this treaty. Thus Great Britain demands for herself the Monroe doctrine applied to certain regions where she claims a vital interest, and concedes to the United States the Monroe doctrine limited to the Western Hemisphere. To this condition of signature prescribed by Great Britain Secretary Kellogg made no reply. As Great Britain signed the treaty without any reply from Secretary Kellogg, it must be assumed that he acquiesced in the contention of Great Britain and that these certain regions are excluded from the provisions of the treaty. If this is not correct, it was the duty of the Secretary of State in frankness and candor to make reply and insist on no such exclusion. Thus Great Britain would not under this treaty be prohibited from waging war in those regions of the world where she considers she has a vital interest. As Great Britain has interests in all parts of the world, this treaty would hardly restrain her in many conceivable cases. It is left to her decision and judgment under this understanding to determine what these interests are and where located. If this right belongs to Great Britain where she has special interests, it belongs equally to other nations. If Great Britain is unfettered and unrestrained by this treaty to wage war in China, Egypt, the Sudan, India, and Afghanistan, Italy is equally unrestrained in the Adriatic, and Italy and France are unrestrained in the Mediterranean and Africa, where they have special interests and possessions. These reservations of Great Britain are of little value and importance, since they are all included in the right of self-defense, which under the treaty is reserved to each nation, and each nation determining for itself the necessity for and the means to be used.

Mr. President, it should also be specially noted that through the open and repeated insistence of Mr. Austen Chamberlain and the silent acquiescence of Secretary Kellogg the Monroe doctrine is left unaffected by the treaty. If this treaty is ratified, the Monroe doctrine will retain its present status; after careful consideration this conclusion seems to my mind incontrovertible. The Monroe doctrine remains unaffected by this treaty—

First. Because, as just stated, the insistence of Mr. Austen Chamberlain and the acquiescence of Secretary Kellogg specifically exclude it from the operations of the treaty.

Second. The United States could preserve it and use all force necessary to do so under the plea of self-defense, the necessity of which every government determines for itself. All acts or wars of self-defense are excluded from the operations of this treaty.

Third. If any outside government should commit any act of aggression in North, Central, or South America, that nation having violated this treaty would be denied its protection and the United States under the very terms of the treaty would be relieved of all the obligations of the treaty toward that nation.

The strongest adherents of the Monroe doctrine in its most extreme form can vote for this treaty with the full assurance that the treaty leaves the doctrine undisturbed. Those who favor the Monroe doctrine being maintained as a shield of protection to all Latin America from foreign aggression and not as an excuse for interference in their domestic affairs, and the extension of the power and influence of the United States by force and war, can approve this treaty, since it proclaims sentiments of peace and good will, and its declarations condemnatory of war, if adhered to, would prevent a recurrence of deplorable transactions which have recently occurred in Central America. The treaty speaks the voice of peace but places feeble restraints on the strong arm of war. I am unwilling to defeat this treaty and silence this voice of peace, however feeble, crying out in a world wilderness of threatened war and woe. The voice may become louder and more potential through the receding years.

Mr. President, the treaty contains no sanctions for its enforcement. No obligation, moral or legal, is assumed by the signatories to use punitive measures against any nation that may violate the treaty. No possible interpretation could construe a treaty promising not to go to war into an obligation to wage war. The indirect implication would be contrary to and irreconcilable with the positive promise. The promise in the treaty is limited to the individual obligation of the signatory and contains no guaranty for any other nation. It should also be noted that the reservations or interpretations made by Secretary Kellogg for the United States are made by notes exchanged similar in

method to those made by other nations, and hence no necessity exists that these should be repeated in the resolution of ratification. The treaty provides no tribunal, no instrumentalities for the settlement of international differences. These are left to be composed outside the scope of the treaty. This was one of the fatal defects of the treaty even in the form as originally proposed. International differences, if long continued, invariably fester and produce increased soreness. International tribunals of efficiency and character, inspiring confidence and acquiescence, are indispensable for their proper settlement. This treaty ignores these entirely. Mr. President, after mature consideration I have reached the conclusion that this treaty is a friendly gesture for peace, that as a peace pact it will be found ineffective and disappointing. No nation can rely upon it for protection. This is the view of President Coolidge, since in his Armistice Day speech, in which he mentions this proposed multilateral treaty, he strongly recommends an adequate Navy for national defense and the protecting of our great foreign interests and commerce. This pact has not been considered by him sufficient in its peaceful accomplishments to induce him to reduce in the least his demands for an increased Navy. His contention in this respect despite this treaty is wise and foreseeing. He apprehends the troubles and dangers which will accrue to us from deficient naval armaments. He wisely concludes it is better to trust our rights and security to naval ships than to this peaceful gesture, although concurred in by all nations. Mr. President, although this treaty is a mere gesture, yet it is a gesture of peace, not hostility; of good will and conciliation, not of irritation and defiance. While it may be powerless to prevent war, yet it legalizes no war. It permits but does not approve war. It is a noble gesture or declaration for world peace and as such I shall support it. It marks an advance for peace, not a retreat. It will be beneficial in crystallizing and in increasing the sentiments of the people of the world for peace. The only sure foundation upon which world peace can be permanently builded is the earnest wish and determination of the people for peace. This is a light, though a feeble one, which may guide some along the pathway of peace. The friends of world peace must realize that in securing this pact while they have made some advance, yet they have hardly begun the long journey which they have undertaken to abolish war as a means of the settlement of international difference. The Senate would not be justified in rejecting this treaty negotiated by our Government. We would be misunderstood and misrepresented in the world as possessed of imperialistic aims and warlike purposes. We should willingly permit our Government to make to the world this noble gesture of peace and friendliness.

Mr. BORAH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Fletcher	King	Sheppard
Barkley	Frazier	La Follette	Shipstead
Bayard	George	McKellar	Shortridge
Bingham	Gerry	McLean	Smoot
Blaine	Glass	McMaster	Steck
Blease	Glenn	McNary	Steiwer
Borah	Goff	Moses	Stephens
Brookhart	Gould	Neely	Swanson
Broussard	Greene	Norris	Thomas, Idaho
Bruce	Hale	Nye	Thomas, Okla.
Burton	Harris	Oddie	Trammell
Capper	Hastings	Overman	Tydings
Caraway	Hawes	Pine	Vandenberg
Couzens	Hayden	Ransdell	Wagner
Curtis	Heflin	Reed, Mo.	Walsh, Mass.
Dale	Johnson	Reed, Pa.	Walsh, Mont.
Deneen	Jones	Robinson, Ark.	Watson
Dill	Kendrick	Sackett	
Edge	Keyes	Schall	

The PRESIDING OFFICER. Seventy-four Senators having answered to their names, a quorum is present.

Mr. McLEAN. Mr. President, ordinarily I think too much of my time, however valueless it may be, to consume it fighting what is said to be a lost cause. Six weeks ago I expected to vote for this treaty without comment, but I have changed my mind, and as a member of the Committee on Foreign Relations I want to put into the RECORD a few of the reasons why I can not vote for it, unless the Senate, by resolution or otherwise, makes it clear that its views with regard to the right of self-defense coincide with those of the distinguished chairman of the Committee on Foreign Relations.

After listening to his very able presentation of what he conceives to be the purpose of this treaty, I would look for peace in the only place where he and I agree it can be found with certainty. If I could have my way, I would send both the treaty and the cruiser bill back to their respective committees. I would then adopt a resolution requesting the President to call a conference to be composed of the signatory powers to this treaty for the sole purpose of reducing navies to reasonable domestic peace requirements. At the end of this conference we would know just how anxious our neighbors are for the only kind of peace worth having.

In other words, Mr. President, I think the time has arrived to stop throwing peace paper wads at the dogs of war, expecting that they will seriously injure the dogs or destroy their appetite for a more palatable diet. I think the time has arrived to pull the teeth of these dogs if their owners want to reduce their fighting propensities and possibilities. But I would not begin by pulling the teeth of our half-grown pups while other nations are enlarging their packs with full-grown specimens and are sharpening their teeth. To change the metaphor, I would tender to our foreign friends some of the peace paper currency issued by the League of Nations and the Locarno treaty and our own arbitration treaties and see whether we could get anything worth while in return.

But, Mr. President, I realize that the Senate will not do this, and so I suggest that the Senate ought to use ordinary care in its treatment of this vitally important matter, and, as far as is possible, save the generations to come from just accusations of deceit and bad faith.

I look upon this treaty as running upon all fours with the eighteenth amendment to the Constitution of the United States. A few men, clothed with a little brief authority, conceived the idea that they could by operation of law make men stop wanting what they do want, just as in this treaty a few men conceived the idea that they could repeal nature's first law and destroy the acquisitive and combative instincts by signing an agreement not to fight unless they want to fight.

Mr. President, I feel that I am not only honor-bound but oath-bound to bring to this instrument freedom of criticism and conclusion unbiased by outside influences, however threatening or tempting they may be. I think that the experience we had less than 10 years ago with international peace leagues and proposals revealed to us the almost prophetic wisdom of the framers of the Constitution, when they decided that our contracts with foreign powers should have the approval of two-thirds of the Members of this body.

It is my view that the assertion or intimation that some, if not all of the powers, will withdraw their support from this treaty in the event the Senate should follow their example in their insistence upon reservations can not be well founded if they are acting in good faith, and if they are not acting in good faith, now is the time to find out. I think we ought to have confidence enough in our good will and peace-seeking neighbors to assume that they are willing to accede to us the same liberty of interpretation that they have deemed it wise to exercise in behalf of the nations they represent.

I think the American people and the rest of the world clearly should understand that this treaty attempts to do nothing more than express a mutual and sincere desire for peace; that it contains no obligation to use force or refrain from the use of force; that it does not and will not entangle or disentangle anybody or anything; but that it is the hope of all that its solemn ratification may bring the world a little closer to an intelligent understanding of the real forces and facts that make and unmake peace and good will among individuals, states, and races. If, as is asserted by Mr. Kellogg, this is precisely what its sponsors claim for it and all they claim for it; if, as they say and he says, it is nothing more than a good-will gesture, solemnly affirmed, what earthly or heavenly objection can there be to a formal expression by the United States Senate that will protect future generations from any misunderstandings with regard to the matter?

I can not account for the inordinate desire for haste evidenced by the friends of the treaty. All of the powers capable of starting a war worth mentioning are members of the League of Nations and the Locarno treaty, and most of them have agreed to arbitrate all of their disputes with us that can properly be settled by peaceful methods; so we find all the powers that we need fear, or that are afraid of each other, already thrice bound by paper promises to keep the peace. These promises, now solemnly signed, sealed, and delivered, carry with them ways and means for their interpretation and performance. Why, then, this anxiety to get us to sign a fourth promise, if it is nothing but a gesture? And why should we, of all nations, be in a hurry about it? Is there any reason why France should not see in this treaty a moral obligation on our part to help her maintain the status quo, or any reason why Germany should not see in this treaty a tender of our sympathy and friendship in the event the German people should start another war in defense of the fatherland? Under the highly polished veneer of diplomacy, does this treaty do more than conceal the hope, on the part of each of the great and frightened powers, that by

signing it each will be safer in its intrigues and ambitions to get an advantage over a competitor or maintain an advantage already in hand?

If we can rely upon anything as a basis for an accurate inventory and appraisal of the moral forces behind this treaty, we can rest assured that human nature in Europe and elsewhere is what it was 10 years ago. The centuries may have inclined the world to prefer mercy to cruelty, but the acquisitive and combative instincts are still at par, and forbidden fruit is as sweet and popular to-day as it was in the Garden of Genesis.

I am not an isolationist. I voted for the League of Nations and our adherence to the World Court with reservations. I realize that industrial and cultural internationalism is on the way, and I hope that our influence will help it respond to the economic and ethical necessities of an intelligent civilization. But I think we can all agree that political internationalism is entirely a different matter. I need not discuss the racial, geographical, and economic reasons why a political supersovereignty with the vast and complicated judicial, legislative, and executive machinery necessary to its existence is still among the things that dreams are made of. And it is well to bear in mind that neither peace leagues nor world courts nor modifications of international law can abolish wars or rumors of wars without the aid of an international army and navy, operated in obedience to international decrees, delivered in sealed envelopes to international generals and admirals. International wars and crimes and misdemeanors must be abolished as the domestic varieties are abolished by superior force. Mere declarations and renunciations of war, solemn declarations abolishing war and agreeing not to fight are all alike impotent provided anyone wants to fight.

The eighteenth amendment abolished the right to make or sell alcohol for beverage purposes, and yet we read in the Washington News, a journal violently supporting this treaty, that $2,000,000 worth of alcoholic beverages were bought and sold in the city of Washington on the one thousand nineteen hundred and twenty-eighth anniversary of the birth of the Prince of Peace. This deplorable fact does not argue for or against the purposes of the eighteenth amendment. It does furnish, however, a startling and conclusive illustration of the generally forgotten fact that laws and constitutional amendments and treaties are rear guards only. If they attempt to lead they will be ignored to the extent that they do not run in harmony with the public conscience, be it good or evil.

This brings me to a brief consideration of some facts which I think bear upon this treaty and which we must not ignore if we desire to avoid serious complications for those who will come after us.

In the first place, I want to remind the Senate that in so far as there is a chance for permanent peace with justice in the world to-day the credit is entirely due to the men and women who won the war which ended in November, 1918. Had they failed, imperialism by divine right would have imposed terms upon the vanquished that would have made another war inevitable, and multilateral peace treaties to-day would be religiously unpopular in ambassadorial circles. We look upon war just now as a very wicked and a very silly business, but I think we can agree that it was a very praiseworthy and serious business for the dead and maimed and their comrades who brought it to a victorious conclusion.

I have nothing against generals or prime ministers, but it was my fear at the close of the war, a fear that has been fully justified by subsequent events, that the cause for which our soldiers risked and many of them lost their all would be forgotten by the generals and others interested in accumulating glory and real estate. Deaf to our advice, blind to our example, and dumb to the purposes for which they claimed they wanted our assistance, the nations that we saved from unspeakable disaster and humiliation left considerable portions of the world's surface as unsafe for democracy as they could. I am not saying that they were greatly to blame then. The god of battle had us all in tow for many months after the war ended. I can put myself in the place of the French father and mother, bereft of sons and home, and find plenty of excuses for the treaty of Versailles when it was ratified. Nevertheless, the fact remains that the victors left the vanquished about as Rome left Carthage in the brave days of old. Our associates signed the covenant of the League of Nations, the declared purpose of which was to secure a rapid and radical reduction in the armies and navies of the great powers, and then they proceeded to increase their armies and navies. Later on, having agreed with us to reduce naval armaments of a certain type, they proceeded to strengthen their navies in other types. Having taken from Germany all of her colonial possessions and imposed reparation penalties to the limit and beyond, it was natural for our associates to want to continue that good old plan by which he shall take who has the power and he shall keep who can. It was natural, but it was wrong, and as yet we have seen no signs of repentance worth noting.

I am confident that the good men and women in America who want this treaty ratified have given but little consideration to the war-breeding conditions in the East which must be removed by the victors in the late war if paper promises to maintain peace will do more than testify to the hypocrisy of those who have signed them. In Russia we find white autocrats supplanted by red autocrats determined upon a world revolution that will destroy individual and economic liberty and substitute a political and social régime of universal poverty for the common good. When Russia finds that this sort of thing is unworkable outside of cemeteries and penitentiaries nobody knows what will happen. But, with an Army already organized consisting of five millions of gentlemen and a million or more ladies, we may hope for the best and expect the worst.

Dictatorships, varying in their badness, are regnant in Italy, Bulgaria, Rumania, Hungary, Poland, and Lithuania, and we know how these dictatorships will end if history repeats itself. We find Austria torn to pieces; Germany dismembered; and the political union of these two powers forbidden by the treaty that was to make the world safe for the doctrine of self-determination. We find La Belle France and Mother England alternately nursing and spanking their old and new war babies, as the occasion may require, quite indifferent to their parentage. [Laughter.]

In the west we find the old dispute between England and the United States as to the rights of neutrals and free cargoes upon the high seas as acute and keen as it was in 1915, before the *Lusitania* was sunk, and the United States Senators were demanding that our Navy drive British cruisers away from our merchant ships carrying cotton to Germany. I am calling attention to but few of the items which indicate that the kind of world peace for which it was claimed the war was fought has been forgotten or ignored by our victorious associates. In a word, anyone who cares to familiarize himself with the political, racial, and economic conditions imposed upon Europe by the treaty of Versailles must reach the conclusion that peace hallelujahs and other varieties of lip service will not prevent future wars so long as the great powers persist in sowing the seeds of war. The same motives that impelled France to want to keep what she took from Germany will justify Germany in seeking their recovery as soon as she is able. France knows this and that is why shortly after the treaty of Versailles was ratified, France proposed a military alliance with the United States and Great Britain to maintain the status quo.

This proposal was declined. Then France sent her armies into the Ruhr Valley, and when she failed to realize her purpose in doing this, France again came to us with a proposal that the two nations that had sustained peaceful relations for 150 years should promise to remain at peace, a clear indication that France might want our help for purposes other than those mentioned in the treaty. About two months ago Mr. Poincaré, Mr. Chamberlain, and Mr. Parker Gilbert agreed with Germany that the Dawes plan of reparation should be revised, and it is there and to them that we must look for adjustments and compromises that will remove existing fears and secret vows of vengeance and help Europe to maintain political and industrial good will.

If we want good will, we must pay for it in the kind of currency that will buy it.

If Mr. Briand had gone east instead of west and promised Germany that he would do his best to bring about a modification of the unbearable terms of the Versailles treaty, he might have lost his job; but he would have gone into history as a genuine friend of peace; and if France had supported him, she would have commanded the admiration of the world and regained her historic reputation as a good sport and lover of fair play. But Mr. Briand comes to us with his new pipe of peace. We suggest that it is a good time for all the braves to gather around the international wigwam and have a smoke. This they did, but, as might have been expected, they found a carload of coughs in the first puff of the self-defense mixture, and they declined the second puff until it was understood that it would not interfere with the free use of tomahawks and hatchets. [Laughter.]

The first section of the treaty is behind the event and, therefore, harmless. The second section is a thousand years ahead of the event, if it means what it says.

Disputes of every nature and origin must be settled by peaceful methods. If an enemy hits you hard enough to cause you to dispute his right to do it, you must keep your hands in your pockets. This is what the treaty says. In just three lines it outlaws nature's first law and inlaws the millennium. But,

of course, it does not mean what it says. We are told that paper promises not to fight always imply the right to fight in self-defense. As history does not record a nondefensive war in the opinion of either of the combatants, this treaty seems to return the world to about where it started. Cain slew Abel in defense of his line of business, so Cain said, and the Lord promised sevenfold vengeance upon anyone who disagreed with him. We invaded Cuba in defense of the American idea in general and the Cuban people in particular. Germany invaded Belgium in defense of the Fatherland and the war-guilt probers have revealed many pertinent facts which sustain this contention.

We find about the same conglomerate of men and morals in the ranks of both sides that we did when war was the only instrument of national policy known to self-respecting States. We find socialist and individualist, deist and atheist, Moses and Darwin, marching shoulder to shoulder for God and country in the ranks of friend and enemy; and, as usual, victory goes to the heaviest artillery. This was the case only 10 years ago.

So, Mr. President, the signatory powers having made it clear that under this treaty they can fight whenever they want to, we then come to their antagonistic views as to when and under what circumstances each would have the right to want to fight.

When this treaty was considered by the Committee on Foreign Relations it was accompanied by a pamphlet containing the official communications antedating the approval of the treaty. It was claimed by some that when the treaty was signed all these preliminary discussions and reservations would be merged in the treaty, but, as there is nothing in the instrument itself that attempts to provide or designate a tribunal to inquire into or discover the guilt or innocence of the nations involved, it goes without saying that should a dispute arise every explanatory word and comment and every condition of acceptance that was reduced to writing by the official negotiators before the treaty was approved will be published, and all the extensions and all the limitations of the right of self-defense which may appear in these communications will bring acquittal or conviction as public opinion in the nations interested may decide. In the meantime, self-interest and inherited prejudices will line up other nations indirectly interested in the controversy; and, should war ensue, might will make right, as usual.

The first thing that aroused my interest in these preliminary negotiations was the extreme care with which Great Britain reserved the right to defend her "regional" interests far away from home, and the like care with which we omitted any mention of ours. We not only failed to mention them, but in the first section of our letter to the powers of date June 23, 1928, in defining the right of self-defense, we said:

> Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion—

And so forth.

In our arbitration treaty with France, ratified in February last, we were very careful to specify the Monroe doctrine as likely to raise questions that could not be arbitrated. This was done in all of our arbitration treaties. But, I repeat, in the multilateral treaty we not only failed to mention the Monroe doctrine, but we used language calculated to limit our right of self-defense to invasions and attacks upon our territory.

I must assume that this was done in order to secure the signatures of some of the countries in South America; and, if this assumption is correct, both ourselves and the objecting countries made a serious mistake, in my opinion. The Monroe doctrine is not easily defined, but we know it goes far beyond the mere defense of our territory. To use a few big words, it is an ethnological, anthropological, sociological, geographical fact. To use a street expression, it has been and still is "in the cards"; and these cards are dealt by forces quite beyond the control of law and treaty makers. When we secured our independence, democracy was stamped upon every rod of the Western Hemisphere, and the Monroe doctrine would have been observed to the letter if it had never been written by Mr. Adams or read aloud by Mr. Monroe; and we know that any attempt by anybody to interfere with it in the future will result as such attempts have resulted in the past. But as this doctrine has been published or proclaimed and its principles reserved in all of our peace treaties, its omission in this treaty is significant and dangerous.

On the north for a 100 years or more we have had a treaty with Great Britain, by the terms of which the Great Lakes were to remain free of competing navies; but this treaty has been nothing more than a reminder of conditions that would have obtained without it, and the reasons are racial and generic. For similar reasons, in the south we have had occasion to intervene in the past, and may have occasion to intervene in the future. Right here, let me say that this doctrine of nonintervention, so dear to some peace lovers, has no foundation in ethics. Sometimes it is very wrong; sometimes it is a plain and positive duty. It all depends. Our liberation of Cuba and our construction of the Panama Canal are major instances of our purposes toward our neighbors on the south. We want them to maintain law and order, raise their standard of living, and enjoy the highest degree of prosperity possible; and that is all we want. We know that the art of self-government is not an easy one to master. It may not be our fault or the fault of our neighbors that we and they remain in ignorance of its ultimate possibilities. It is our idea that it must be learned some time if the nations of the earth are to secure and maintain international peace with justice, and if this art can not be acquired by self-instruction it must be taught; and if we do not teach it to ourselves in the Western Hemisphere somebody else will.

We have bandits in Chicago and elsewhere. We also have corn borers, coyotes, and boll weevils; and they all present precisely the same economic and ethical problems. We do not poison the bandits, but we try to catch them; and if we succeed we shut them up, and give them three square meals a day, and try to reform them. Twice in recent years we have intervened to protect South American countries from the aggressive propensities of European powers. Several times in our history our men-of-war have found it necessary to go far from home to protect the lives and vital interests of our citizens. We may have occasion in the future to act the part of the good Samaritan and use force if necessary to suppress organized crime—errands far remote from the defense of our immediate territory, and wholly commendable.

If this treaty is ratified and the interpretative resolution is rejected in toto, our neighbors will claim that we have abandoned the Monroe doctrine; and they will point to its significant omission in our note to the signatory powers, and to the limitation of our right of self-defense to attacks upon our territory, in support of their claim. Our neighbors will insist that we have abandoned the Monroe doctrine, and foreign powers will insist that the League of Nations is to settle disputes which may arise in the Americas; and South America will be the first to regret it.

Already we are informed that an inscription is to be placed in the room where the Council of the League of Nations meets, noting the fact that the cablegram which was sent to Bolivia and Paraguay prevented war between these countries. The Swiss Government is to be applied to for permission that this inscription be placed in this room. Here we have a definite intimation of what will be expected of us if we do not remove by Senate resolution our implied abandonment of the Monroe doctrine contained in our official communication to the other powers.

I say again, if this treaty is to be a gesture and nothing more, why should the Senate hesitate to adopt a resolution that will put it in accord with this view? And if this treaty is more than a gesture, why should we hesitate to say that its obligations do not impair our right to defend our vital interests whenever and wherever they may be endangered?

Moreover, as long as the nations of Europe are afraid of each other, and have good cause to be, and are jealous and suspicious of us without cause, it is vitally important that we keep fairly prepared for any emergency that may arise. Let us not forget that in 1915, when our merchantmen were sunk and President Wilson warned Germany of the consequences that must follow a continuation of ruthless attacks upon our ships, Mr. Gerard, then located in Berlin, replied to Mr. Bryan, then Secretary of State, that Germany looked with equanimity upon our entry into the war. Do we want to persist in maintaining this humiliating and helpless condition, knowing as we all do that when the right ceases to resist evil the right will cease to exist?

For the accommodation and concealment of men with poisonous weapons and purposes the world to-day is as well adapted and not much larger than were the forests of New England when our forefathers took their muskets with them to church and to town meetings and into the field. They did this in order that they might praise God, maintain order, and hoe corn unmolested; and that is all we want to do. If we reject the interpretative resolution and fail to pass the cruiser bill, we notify the world that in the future our first line of defense will be composed of hymn books only.

When our neighbors of all colors and political creeds see fit to meet our proposals to disarm, we shall be glad to continue to lead the way.

If the great powers, having signed this solemn promise never to fight again, had added an agreement to reduce their navies in harmony with this promise, they would have exemplified a state of mind consistent with good faith and a sincere desire to avoid war. But inasmuch as their subsequent conduct indicates that their purpose in signing this scrap of paper is to encourage us to neglect our first line of defense while they strengthen their own our duty is plain.

We are already told by the nations that rule the waves that the value of this treaty will depend upon the extent to which we "backed it." Here again it is evident that it is protection and peace for the status quo that France and England want. Should Austria and Germany form a political union we would have an act of aggression forbidden by the league covenant. In this contingency should we maintain a tongue-tied neutrality, we would be denounced as slackers. Should we openly sympathize with or support in any way Germany and Austria in their desire to enjoy the self-determinatory privileges promised by President Wilson and others, a very serious situation would present itself.

Similar complications might arise should other nations in Europe, or elsewhere, desire to combine or change their boundary lines by peaceful methods forbidden by the treaty of Versailles. We would, of course, insist that this treaty imposes no obligation upon us to interfere, and we would do this if we wanted to, with or without the interpretative resolution or the assurances contained in the preliminary correspondence. But, whatever we might do, I think we must see that in the contingencies suggested we would be better off without this treaty than with it.

Should war ensue and the nations align themselves as self-interests might dictate and we should adopt a policy of watchful waiting, the combatants on both sides and all sides would tell us that our treaty was a mere "pifflebund," a "hostage to hypocrisy," a Lucy Lockett's pocket with nothing on it, nothing in it, but the binding around it. "If your treaty is without moral, legal, or physical dimensions, why did you ask us to sign it," will be the song and the sermon of the nations who want to sustain the terms of the Versailles treaty. We shall be told that we are morally bound to fish or cut bait; that the party is our party and that the boat is our boat; that they are in it upon our invitation, and that we have no right to go ashore.

We know that if conditions such as I have noted arise we shall seek the shore if circumstances will permit, in which event it will occur to the people of the United States that our peace party was ill-advised and that it would have been much better for us if we had never left the shore. In a word, we may be as unfortunate with, as without, the interpretative resolution. Nevertheless, I maintain that as a precautionary stitch, which may save nine later on, no sincere advocate of this treaty should object to it.

I want to repeat with all the emphasis I possess that the proposed treaty ignores entirely the historic principle underlying the structure of the United States, known as the Monroe doctrine. It is the first time since the American Civil War that in any proposed international treaty for world peace to which the United States has been invited, or of which the United States is a part, the Monroe doctrine has not been specifically reserved.

The first Hague conference of 1899 contained this reservation:

> Nothing contained in this convention should be construed as to require the United States of America to depart from its traditional policy of not entering upon, interfering with, or entangling itself in the political questions or internal administration of any foreign State, nor shall anything contained in the said convention be so construed as to require the relinquishment, by the United States of America, of its traditional attitude toward purely American questions.

The Second Hague Conference of 1907, creating The Hague Court of International Arbitration, preserved the Monroe doctrine reservation.

In the great battle of the covenant of the League of Nations in this Chamber the Senate, learning that the proposed covenant was silent on the Monroe doctrine, agreed to a resolution declaring it the sense of the Senate of the United States that it—

> will not submit to arbitration or to inquiry any question relating to the Monroe doctrine.

Thereupon President Wilson had inserted in the covenant of the League of Nations Article XXI:

> Nothing in this covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understanding like the Monroe doctrine for securing the maintenance of peace.

I am well aware that since the close of the World War and the establishment of the League of Nations a determined effort has been made to break down the Monroe doctrine and to throw it into the discard. This effort has been encouraged largely by the defenders and promoters of the League of Nations, who, directly or indirectly, have poisoned the minds of a few leaders in some Central and South American Republics with regard to it.

I think we should take nothing for granted with regard to this matter.

It is unnecessary for me to quote from the addresses of such outstanding statesmen as former Presidents Roosevelt and Taft, Secretaries Root and Hughes, and Senator Lodge, and others. In 1923, in celebration of the one hundredth anniversary of the doctrine, Senator Lodge said:

> The application of the doctrine rests with the United States, and for the security, the peace, and the well-being of the American continent and of the people of the United States is just as vital, just as essential now as when Monroe and Adams formulated it and gave it to the world.

In 1924 former Secretary Hughes said of the doctrine:

> To withdraw it would simply invite trouble by removing an established safeguard of the peace of the American continents. It is a policy which has rendered an inestimable service to the American Republics by keeping them free from the intrigues and rivalries of European powers.

At Habana, as late as February, 1928, Mr. Hughes again eloquently defended the Monroe doctrine against the charge of imperialism and dictatorship.

In conclusion, let me say that I have nothing but praise for the purposes of the American statesmen who want this treaty ratified. I have been as frank in expressing my views with regard to it as those views are sincere. The Senate always speaks the truth and nothing but the truth, but the whole truth is sometimes left unspoken by diplomats for reasons good and sufficient to the speaker.

The story leading up to this latest proclamation of the golden rule as applied to national intercourse is long and it is not new. We all know how this rule has operated as applied to individuals during a period of nearly 2,000 years, and as the greatest of States is composed of the average man and woman it is my opinion that the nation or the man or woman who looks to the treaty maker or the lawmaker for world or individual good habits will be sorely disappointed.

I do not think the hour has arrived when we should admit that our forefathers set us a bad example when they used force to preserve the only kind of peace worth having. I do not think that the hour has arrived for us to surrender or betray this kind of peace to misinformed saints or well-informed sinners. I think it is our manifest and sacred duty to keep our powder dry and in quantities sufficient to incline other nations to the belief that the universal brotherhood we all hope for will never be the portion of greed or ignorance. If the first section of the Moses resolution is adopted, I shall vote for the treaty in the hope that the signatory powers will do what we want them to do—prove their faith by their works. If they fail in this, then the treaty will bring nothing but criminations and recriminations and imputations of perfidy and bad faith. It is to avoid accusations of just this sort against my country that I urge the Senate to use ordinary care in its decision with regard to this all-important matter.

Mr. BORAH. Mr. President, I understand that there is no one else who wishes to speak on the treaty this afternoon and the Senator from Kansas desires an executive session behind closed doors.

COUNTING OF THE ELECTORAL VOTE

Mr. SHORTRIDGE. Mr. President, as in legislative session, on behalf of the Committee on Privileges and Elections I am authorized to report favorably without amendment Senate Concurrent Resolution 28, which I submitted on Thursday, relating to the election of President and Vice President of the United States. I ask unanimous consent that it may be considered by the Senate at this time.

The VICE PRESIDENT. The clerk will read the concurrent resolution.

The concurrent resolution (S. Con. Res. 28) was read, as follows:

> *Resolved by the Senate (the House of Representatives concurring)*, That the two Houses of Congress shall assemble in the Hall of the House of Representatives on Wednesday, the 13th day of February, 1929, at 1 o'clock p. m., pursuant to the requirements of the Constitution and laws relating to the election of President and Vice President of the United States, and the President of the Senate shall be their presiding officer; that two tellers shall be previously appointed by the President of the Senate on the part of the Senate and two by

the Speaker on the part of the House of Representatives, to whom shall be handed as they are opened by the President of the Senate all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted in the manner and according to the rules by law provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses.

Mr. ROBINSON of Arkansas. Is the resolution in the usual form?

Mr. SHORTRIDGE. It is, I may say to the Senator.

Mr. ROBINSON of Arkansas. I have no objection to its consideration.

The concurrent resolution was considered by unanimous consent and agreed to.

REPORT OF S. PARKER GILBERT ON REPARATIONS

Mr. ROBINSON of Arkansas. Mr. President, I ask leave to have printed in the RECORD an interesting discussion of the report on reparations by Mr. S. Parker Gilbert, contained in the Washington Post of yesterday.

The VICE PRESIDENT. Is there objection?

There being no objection, the matter was ordered to be printed in the RECORD, as follows:

MR. GILBERT'S BOOMERANG

The rosy report of German economic conditions made by S. Parker Gilbert, agent general for reparations, is having the effect of several boomerangs. German public opinion is furious, charging that Mr. Gilbert is deliberately exaggerating German prosperity so that the Allies can fasten upon her enormous reparation claims. French public opinion is delighted with the assurance that Germany can pay reparations at the present rate of $600,000,000 a year. Therefore France is expected to make very stiff demands upon Germany as the price of consenting to a scheme for "commercializing" the reparation debt. British opinion is confused, part of it rejoicing in the prospect of obtaining heavy payments indefinitely from Germany and the other part looking dubiously upon the prospect of a scaling down of Britain's debt to the United States.

Apparently Mr. Gilbert's report was designed partly to convince prospective American investors in German bonds that Germany is solvent and prosperous. But if this was the object, Mr. Gilbert may have overplayed his hand by encouraging the allied powers to increase their demands upon Germany and correspondingly discouraging the movement in Germany to commercialize the reparation account. The Germans are anxious to get the Allies out of the Rhineland, but the military occupation is no longer looked upon as a menace, and the recent outbursts of President Hindenburg and Chancellor Mueller were not taken seriously. Germany can afford to drive a hard bargain in the forthcoming meeting of the experts, because of the saving clause in the Dawes agreement which provides that Germany's "capacity to pay" shall always be taken into account. If Mr. Gilbert is mistaken in his report of German capacity to pay, Germany may be better off under the present arrangement than under a commercialization agreement.

Mr. Gilbert now comes to the United States, to find the conditions unpropitious for floating a big German loan. German bonds already held by Americans are sagging, and investors have not failed to note Mr. Gilbert's statement that the German States are extravagant and are drawing too heavily upon the resources of the reich. It is noted also that German authorities are laying stress upon the disordered condition of the railroads, which will hardly prove to be an incentive to heavy American investment in German railroad bonds. Americans are making too much money in the home market, in any event, to bother with foreign investments at this time.

Thus, with growing disagreement abroad as to Germany's economic condition, and with Americans immersed in profitable operations at home, the carefully prepared scheme to "liquidate the war" at American expense does not seem so promising as it did a few weeks ago, when Messrs. Briand, Churchill, Stresemann, and Gilbert agreed with international bankers that the time was nearly ripe for making another ingenious attack upon the American pocketbook.

EXECUTIVE SESSION BEHIND CLOSED DOORS

Mr. CURTIS. I move that the Senate proceed to the consideration of executive business behind closed doors.

The motion was agreed to, and the doors were closed. After five minutes spent in executive session the doors were reopened; and (at 3 o'clock p. m.) the Senate, as in legislative session, adjourned until Monday, January 7, 1929, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate January 5, 1929

UNITED STATES PUBLIC HEALTH SERVICE

Dr. Cassius J. Van Slyke to be assistant surgeon in the Public Health Service, to take effect from date of oath. (Dr. Van Slyke has passed the examination prescribed by law and the regulations of the service.)

UNITED STATES COAST GUARD

Ensigns to be lieutenants (junior grade) from May 26, 1928

Ensign Henry T. Jewell.
Ensign Donald F. A. De Otte.
Ensign Irving E. Baker.
Ensign Gordon A. Littlefield.
Ensign Frank Tomkiel.
Ensign Kenneth A. Coler.
Ensign Henry J. Betzmer.
Ensign George C. Whittlesey.
Ensign Beverly E. Moodey.
Ensign John A. Fletcher.
Ensign Walter S. Anderson.

The above-named officers have passed the examinations required for the promotions for which they are recommended.

UNITED STATES DISTRICT JUDGE

Robert R. Nevin, of Ohio, to be United States district judge, Southern District of Ohio, vice Smith Hickenlooper appointed circuit judge.

UNITED STATES ATTORNEYS

Leo A. Rover, of the District of Columbia, to be United States attorney, District of Columbia. (Mr. Rover is now serving under appointment by the court.)

William A. Bootle, of Georgia, to be United States attorney, middle district of Georgia, vice Scott Russell, appointed by court.

UNITED STATES MARSHALS

W. Vosco Call, of Utah, to be United States marshal, district of Utah, vice Hyrum O. Pack, appointed by court.

Charles A. Smith, of Indiana, to be United States marshal, northern district of Indiana, vice Lewis C. Sheets, appointed by court.

CONFIRMATIONS

Executive nominations confirmed by the Senate January 5, 1929

APPOINTMENTS IN THE ARMY

GENERAL OFFICERS

David St. Clair Ritchie to be brigadier general, reserve.
George Henson Estes to be brigadier general.

POSTMASTERS

ARKANSAS

Viola Leake, Altheimer.
Nettie M. O'Neill, Earl.
Marion M. Parker, Griffin.
Luther H. Presson, Mansfield.
Lovette J. Lee, Paris.
John H. Martin, Russellville.

CALIFORNIA

Morris E. Crane, Pine Knot.

KANSAS

Maud Williams, Lenexa.

MAINE

Lawrence A. Brown, Brunswick.
Frank P. Freeman, Harrison.

MISSOURI

Lola L. Higbee, Schell City.
Dana Gerster, Stella.

NEBRASKA

Edgar T. Lay, Seneca.
Murry K. Holley, Waverly.

NORTH CAROLINA

Frank M. Wright, Asheboro.
James H. Edwards, Monroe.
Frances G. Thompson, Morven.

OHIO

Lucy M. Robson, Grafton.
William A. Campbell, Oakharbor.
Rhody E. Campbell, Toronto.

PENNSYLVANIA

Edward J. Fleming, Cochranton.
Minnie E. Lewis, Covington.
Edna D. Scott, Dunbar.
Charles H. Lapsley, Glassport.
Grace S. Albright, Hyndman.
Samuel L. Boyer, Library.
Samuel S. Ulerich, New Florence.
Jenny Paterson, Yukon.

TEXAS

Winnie B. Carroll, Center.

WISCONSIN

Marion L. Lundmark, Balsam Lake.
Christian J. Askov, Cushing.

HOUSE OF REPRESENTATIVES

SATURDAY, *January 5, 1929*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

We praise Thee, O Father of Mercies, that the mind of a great God is on the affairs of human life. We beseech Thee that Thou wouldst resolve all discords into flawless harmony. Subdue the rebellious wills and lives of men. Life's greatest values shall be realized when self is lost in great devotion to all the people of the country. Be unto all of us, O God, more than a clause in a creed; bless us with a personal relationship that shall assure us that Thou art all-loving and all-wise as well as almighty. Save us from ourselves and do not allow the treasures of our natures to go down. Do Thou separate our sins from us as far as the east is from the west, and thanksgiving and praise be unto Thy holy name forever and ever. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Craven, its principal clerk, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 5022. An act to amend sections 183 and 184 of chapter 6 of title 44 of the United States Code approved June 30, 1926, relative to the printing and distribution of the CONGRESSIONAL RECORD.

The message also announced that the Senate insists upon its amendments to the bill (H. R. 7729) entitled "An act to divest goods, wares, and merchandise manufactured, produced, or mined by convicts or prisoners of their interstate character in certain cases," disagreed to by the House of Representatives, agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. COUZENS, Mr. FESS, and Mr. HAWES to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H. R. 11469) entitled "An act to authorize appropriations for construction at the United States Military Academy, West Point, N. Y.," disagreed to by the House of Representatives, agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. REED of Pennsylvania, Mr. MCMASTER, and Mr. FLETCHER to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House of Representatives to the bill (S. 3581) entitled "An act authorizing the Commissioners of the District of Columbia to settle claims and suits against the District of Columbia," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. CAPPER, Mr. BLAINE, and Mr. KING to be the conferees on the part of the Senate.

SENATE BILLS AND JOINT RESOLUTION REFERRED

Bills and a joint resolution of the Senate of the following titles were taken from the Speaker's table and under the rule referred as follows:

S. 584. An act for the relief of Frederick D. Swank; to the Committee on Claims.

S. 2859. An act for the relief of Francis J. Young; to the Committee on Claims.

S. 4588. An act for the relief of Gustave Hoffman; to the Committee on the Civil Service.

S. 4712. An act to authorize the Secretary of War to grant a right of way to the Southern Pacific Railroad Co. across the Benicia Arsenal Military Reservation, Calif.; to the Committee on Military Affairs.

S. 5022. An act to amend sections 183 and 184 of chapter 6, of title 44, of the United States Code, approved June 30, 1926, relative to the printing and distribution of the CONGRESSIONAL RECORD; to the Committee on Printing.

S. J. Res. 182. Joint resolution for the relief of farmers in the storm and flood stricken areas of southeastern United States; to the Committee on Agriculture.

W. C. ADAMSON

Mr. RAYBURN. Mr. Speaker, I ask unanimous consent to address the House for three minutes.

The SPEAKER. The gentleman from Texas asks unanimous consent to address the House for three minutes. Is there objection?

There was no objection.

Mr. RAYBURN. Mr. Speaker, on the 3d day of January, in the city of New York, the Hon. W. C. Adamson of Georgia, passed away. He had recently been a member of the Customs Court in New York, and formerly, for 20 years, an honored Member of this House.

When I came to Congress, little more than a boy, I took membership on the Interstate and Foreign Commerce Committee, of which Judge Adamson was chairman. He was to me always kind and considerate. Under his leadership, I think the committee reached as high a peak in the estimation of the House and the estimation of the country as it has ever reached.

Of all the great statesmen the great State of Georgia has ever sent to the Congress of the United States, none in my opinion was higher in character, honor, and ability than was Judge Adamson. His remains passed through this city this morning en route to his home in Carrollton, Ga.

He was one of the foremost statesmen of Georgia, one of the most efficient leaders and capable chairmen. He was a great and good man, a statesman of the old school and of the highest honor.

FIRST DEFICIENCY APPROPRIATION BILL

Mr. ANTHONY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the first deficiency bill, H. R. 15848. And, pending that motion, I would like to ask the gentleman from Tennessee [Mr. BYRNS] if we can agree upon time for general debate.

Mr. BYRNS. I would say that I have two requests on this side, and that we can get through in two and a half hours.

Mr. ANTHONY. It was thought the other day that we would devote this day to general debate. Would not four hours be sufficient for Saturday?

Mr. BYRNS. I will agree as far as I am concerned, and, if necessary, I will relieve the House of some of my remarks.

Mr. ANTHONY. And we will consider the bill under the 5-minute rule after to-day.

The SPEAKER. The gentleman from Kansas moves that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the first deficiency bill, and, pending that, asks unanimous consent that the time for general debate be limited to four hours, one-half to be controlled by himself and one-half by the gentleman from Tennesee [Mr. BYRNS]. Is there objection?

There was no objection.

The motion of Mr. ANTHONY was then agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union, with Mr. LEHLBACH in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the consideration of the bill, of which the Clerk will read the title.

The Clerk read the title, as follows:

A bill (H. R. 15848) making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1929, and prior fiscal years, to provide urgent supplemental appropriations for the fiscal year ending June 30, 1929, and for other purposes.

Mr. ANTHONY. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. The gentleman from Kansas asks unanimous consent that the first reading of the bill be dispensed with. Is there objection?

There was no objection.

Mr. ANTHONY. Mr. Chairman, this is the first deficiency bill presented at this session. It carries a number of items which are in the nature of emergencies, all amounting to slightly more than $84,000,000, which is $664,000 less than the Budget.

I may say at this time that every one of the bills so far reported this session from the Committee on Appropriations is under the Budget estimates.

Now, there are just two items in this bill which are important enough to mention to the House. One of them is the deficiency for the refund of taxes, and the other is the item for the deficiency in the carriage of the air mail.

In regard to the item of $75,000,000 additional proposed to the appropriation for the current year of $130,000,000 for refunds of taxes, there has been considerable discussion. Your committee has been very careful in its investigation of the situation surrounding the principal refund which is included in this item. We have consulted closely with the joint committee of the House and Senate which considered this proposed refund to the Steel Corporation. It is a refund which would attract but little attention in this House if it were not for the fact that this is one of the largest corporations in the world and that the refund carries a larger amount than is usually appropriated for that purpose, and the further fact that some gentlemen on the other side of the House have seen fit and will see fit to make it the medium of partisan political charges and discussion.

In fact, my friend on the Democratic side of the House, the gentleman from Texas [Mr. GARNER], has already gone so far as to make a speech, and he will probably make another one to-day in which he will try his sprouting wings of leadership and broadcast a great deal of political poison for the gullible voters of the country and some Republicans to swallow, unless they are placed upon their guard.

Your committee, as I have said, has inquired carefully into all the facts and circumstances of this proposed refund to the United States Steel Corporation, and we find absolutely nothing upon which to base the slightest suspicion of fraud or collusion or the violation of any law. These large refunds provided for in this bill have one effect, which has been discussed and which will be discussed to-day. They have in a measure served to materially change the relative expenditures of the Government as compared with the receipts for the current fiscal year, and my friend, Mr. GARNER, the other day, in discussing a probable deficit in the Treasury on the receipts of the current year even went so far as to charge the President of the United States with deliberate fraud and misrepresentation to this House and to the country.

Mr. GARNER of Texas. Mr. Chairman, will the gentleman yield?

Mr. ANTHONY. I would rather yield after I have made my statement.

Mr. GARNER of Texas. I just wanted to correct the statement which the gentleman is making now, which is not correct, and I am sure he does not care to make an incorrect statement.

Mr. ANTHONY. I yield to the gentleman from Texas.

Mr. GARNER of Texas. Nowhere in the RECORD, either in the speech I made the other day or in the speech I made before the gentleman's committee, have I charged the President of the United States with making a misrepresentation to Congress, but I did say that the information furnished the President by the Treasury Department caused him to give misinformation to the Congress as to the surplus.

Mr. ANTHONY. I think the gentleman's language might be construed in that way, but I am glad that he meant it the way he did. What the gentleman did say in effect was that the Treasury officials or the Budget, through the President, had misrepresented the situation to Congress.

Mr. GARNER of Texas. And undoubtedly they did.

Mr. ANTHONY. I ask the House to bear with me for a moment, because I say that the President was absolutely correct in the statement that he made in his message to the House in connection with the presentation of the Budget on December 3. Everybody knows that the Budget is an immense book with thousands of pages. It has to be prepared and sent to the printer at least two weeks before the President sends it to the House, and this great volume contains his speech in regard to it, so that on November 20, when the Budget was sent to the printer containing the President's speech, every word that he said in regard to the financial situation of the Government at that time was absolutely correct. There was a balance on the right side of the ledger to the amount of $37,000,000 on November 20 in the Treasury operations for this year. I consulted with officials of the Budget Department about November 22 in connection with my work in the Committee on Appropriations to find out just what the Treasury conditions were. I was assured that we had that balance at that time on the right side of the ledger, but was told that there were several things that could happen at any time which would put us in the "red." One of them was this proposed large refund to the Steel Corporation and other corporations, which would vastly increase this item of expenditure and might put us on the wrong side of the ledger. Another one was that if pending cases in the courts were decided against the Government it could very easily throw us on the wrong side of the balance in the Treasury. One of these things has happened. The necessity for large refunds to the taxpayers has become apparent, but the President, in making his statement on December 3, was absolutely correct, and on December 5 the Chief of the Bureau of Internal Revenue approved these large refunds to the steel and other corporations, and the apparent balance was turned into a deficit. But what does this situation really amount to when we discuss the probable balance for this fiscal year? It means that no one can tell now what the situation will be on June 30. It is entirely probable that if the income of the Government goes on as it is to-day, if the same measure of prosperity prevails in industry and trade in this country, the receipts of the Treasury will be ample to take care of the expenditures of the Government this year, and we may yet have a balance on the right side of the ledger.

The principal matter involved in this return to the Steel Corporation of $15,000,000 of principal and approximately $11,000,000 of interest, is that of the consolidated return idea. The Steel Corporation is made up of the parent organization and about 195 subsidiaries. If they were compelled to make independent returns, one company would not have the right to balance its losses against the profits of another company. Our Democratic friends criticize the Treasury Department for this payment to the Steel Corporation largely made up as it is on the allowance of the principle of these consolidated returns. I want to say to these critics of the Treasury Department that if instead of criticizing Mr. Mellon and the present administration in the Treasury Department, they would criticize the Secretary of the Treasury who was responsible for the regulation which gave the Steel Corporation and other corporations the right to make consolidated returns of their subsidiaries, they would place the blame on Secretary McAdoo who first promulgated the regulation giving the Steel Corporation and these other corporations the right to make consolidated returns under date of February 4, 1918.

I would like to ask the Clerk to read the paragraphs marked in the document entitled "Regulations No. 41, Relative to the War Excess Profits Tax Imposed by the War Revenue Act Approved October 3, 1917," published by the Government Printing Office in 1918.

The Clerk read as follows:

183. ART. 77. When affiliated corporations must furnish information as to intercorporate relations: For the purpose of the excess-profits tax, every corporation will describe in its return all its intercorporate relationships with other corporations with which it is affiliated and will furnish such information in relation thereto as will enable the Commissioner of Internal Revenue to compute the amount of the tax properly due from each corporation on the basis of an equitable and lawful accounting.

184. For the purpose of this regulation, two or more corporations will be deemed to be affiliated (1) when one such corporation owns directly or controls through closely affiliated interests or by a nominee or nominees all or substantially all of the stock of the other or others, or when substantially all of the stock of two or more corporations is owned by the same individual or partnership, and both or all such corporations are engaged in the same or a closely related business; or (2) when one such corporation (a) buys from or sells to another products or services at prices above or below the current market, thus effecting an artificial distribution of profits, or (b) in any way so arranges its financial relationships with another corporation as to assign to it a disproportionate share of net income or invested capital.

185. ART. 78. When affiliated corporations may be required to make consolidated return: Whenever necessary to more equitably determine the invested capital or taxable income the Commissioner of Internal Revenue may require corporations classed as affiliated under article 77 to furnish a consolidated return of net income and invested capital. Where such consolidated return is required, it may be made by any one or more of such corporations or by all of them acting jointly; but if such affiliated corporations, when requested to file such consolidated return, neglect or refuse to do so, the Commissioner of Internal Revenue may cause an examination of the books of all such corporations to be made and a consolidated statement to be made from such examination. In cases where consolidated returns are accepted the total tax will be computed in the first instance as a unit upon the basis of the consolidated return and will be assessed upon the respective affiliated corporations in such proportions as may be agreed among them. If no such agreement is made, the tax will be assessed upon each such corporation in accordance with the net income and invested capital properly assignable to it.

Mr. ANTHONY. Now, Mr. Chairman, I do not offer the slightest criticism or the slightest imputation of irregularity in the issuance of those regulations, but I do say that if there is to be any criticism of anybody for authorizing the refund of taxes made under that principle—and it is the underlying prin-

ciple in the Steel Trust settlement—the responsibility should be placed upon the people who put into effect those regulations.

Just one observation in regard to the probable effect that the allowance of these refunds will have on our operations this year. If we had followed the advice and recommendation of the gentlemen on the other side of the House who are leading in this criticism, instead of our being $37,000,000 on the wrong side of the ledger to-day we would be $200,000,000 to the bad.

If I remember correctly, when the United States Chamber of Commerce two years ago recommended that we should have a tax revision involving a reduction of $400,000,000, that was tacitly approved by the gentleman from Texas [Mr. GARNER] and the other leaders on that side of the House. In the discussions which followed in the House afterwards the gentleman from Texas and other Democratic leaders offered amendments to the tax bill at that time which would have meant a reduction of taxes of hundreds of millions of dollars more than was made, which represents practically the amount by which we would have been deeper in the hole to-day if we had followed their advice and leadership.

As I stated before, under such examination as our committee was able to make—and we went very carefully into the matter, as completely as was allowed by the time at our disposal—there was not the slightest iota of evidence deduced to indicate that this refund should not be allowed.

Mr. COLE of Iowa. Mr. Chairman, will the gentleman yield?

Mr. ANTHONY. Certainly.

Mr. COLE of Iowa. When were these taxes levied?

Mr. ANTHONY. In 1917.

Mr. COLE of Iowa. During Mr. McAdoo's administration?

Mr. ANTHONY. Yes; during Mr. McAdoo's administration; and the regulations under which the refund is claimed were put into effect in February, 1918.

Mr. COLE of Iowa. In other words, we are now called upon to clear up the record which the gentlemen on the other side represent?

Mr. ANTHONY. Yes; the record made at that time.

Mr. BYRNS. Mr. Chairman, the gentleman from Iowa [Mr. COLE] has just referred to the necessity of clearing up the record which the Democratic administration made. I will say to the gentleman that this particular question involves the payment of millions of dollars, including about $26,000,000 to the company to which the gentleman from Kansas referred, by way of refund of money collected under a Democratic administration and for which no claim was made for refund under a Democratic administration, because that company and many other companies availed themselves of the privileges given them under the law of waiting practically five years before they filed their applications, and they did not file them under the administration which had collected the funds.

Now, it is not my purpose to discuss any of the features of this bill under general debate. I may say that I believe I speak for the Democrats of the Committee on Appropriations when I say there is no particular objection, or any objection so far as I know, to any of the provisions of this bill except that provision which proposes to appropriate $75,000,000 for refund of taxes. The minority opposed this in the subcommittee, opposed it in the full committee, and will oppose it here on the floor of the House.

I have been a member of the subcommittees which have considered the appropriations for the refund of taxes ever since the Government has been refunding income taxes illegally and erroneously collected. Always heretofore I have acquiesced in appropriations made for that purpose, and I have raised no question as to those refunds, but I will say to the gentlemen of the House that while the Committee on Appropriations has made such investigation as was possible in the consideration of these estimates, there has been no real investigation ever made by the Appropriations Committee of these refunds except to ascertain the amounts that will be needed. When I say that I do not say it by way of criticism of the committee, because, as a matter of fact, the Appropriations Committee is not provided with the machinery, with the experts, and with the force to go into a detailed investigation of these various refunds.

The only thing that was possible for the committee to do was to ascertain from those representing the Treasury Department the amount of money that had been allowed and the amount it estimated would be needed before another appropriation bill could be passed. That is all that was done with reference to this particular appropriation, as you gentlemen will see if you will examine the hearings; and that is all that has been done with reference to previous appropriations, as you will clearly see if you will examine the hearings on those different occasions.

As I have said to you, I have always heretofore acquiesced in these estimates for refunds, but we are confronted with a different situation at this time. We have a joint committee, appointed under the law, to receive in advances of payment all settlements which exceed $75,000. That committee is provided with experts costing the Government more than $40,000 every year. Certainly it was expected—whether it is so written in the law or not—when Congress appropriated $40,000 for experts that the joint committee should do something more than merely receive these reports from the Treasury Department. It was certainly expected that the joint committee, especially with reference to these larger claims, would make some investigation so as to enable the Members of the Congress to act intelligently when they came to approve them, as you will approve them when you pass this particular appropriation.

Now, our attention has been called to the fact that the joint committee, after considerable hearings and discussion of one of the claims, to which the gentleman from Kansas has referred, involving something like $26,000,000, expressly failed to give its indorsement and approval of that particular claim, although, as has been stated on the floor of this House and in the hearings, a motion was made in that joint committee to approve it. They failed to approve it; yet you and I, as Members of Congress, are asked by our vote in passing this appropriation to approve it, nothwithstanding the fact that the committee in which that responsibility was vested, and which has been supplied with the experts to make an investigation, refused to approve it. That is one of the reasons why, as a member of the Appropriations Committee, I have refused to give my vote in support of this particular appropriation.

Now, another thing, and I shall conclude, because it is not my purpose to go into any discussion of the merits or demerits of any of these claims or into any detailed or elaborate discussion of the matter. But let me say this: There is something more involved in this than the particular claim to which the gentleman referred, large as that is.

There are other large claims pending before that joint committee, and this involves a policy as to whether or not Members of Congress, despite the fact that they have a joint committee vested with this authority and with this power, are going to approve these claims for large or small amounts that are sent up here without that investigation which should be given them. So far as I am concerned, I think there ought to be some change in the methods which are being followed with reference to the consideration of these tax-refund cases, because if you will read the hearings, consuming only, possibly, an hour or an hour and a half before the Subcommittee on Appropriations, you will find that these claims are practically passed upon by one man. Mr. Bond stated that when they were considered and reported, unless the official making the settlement was in doubt it was passed without further objection, but, of course, if he expressed a doubt it was carried before the board. So here we are in the attitude, I say, of passing these large claims without any investigation upon the part of Congress and which are settled, really, by one man. They call them settlements, but they are really compromises, and you and I know that the Treasury Department is not vested with the authority to compromise a claim which has been found correct by its duly accredited representatives. Of course, they get around that by holding their findings in abeyance. Then they make their settlement, which, of course, they say they believe—and I do not question that—to be in the best interests of the Government, and then they follow the policy of revising the findings so as to accord with the settlements or compromises which they make with these various taxpayers. So, as I say, there ought to be a change made by the legislative committee which has jurisdiction over these matters in order that Congress may have some information. But I repeat that since the joint committee, provided with the machinery for that purpose, refused to take the responsibility of approving this claim, as a Member of the House I refuse to take the responsibility of passing it and voting for it unless it is safeguarded by a proper amendment.

Mr. DEMPSEY. Will the gentleman yield for a question?

Mr. BYRNS. For a brief question; yes.

Mr. DEMPSEY. Is it not a fact that the act appointing the joint committee does not in express terms confer upon that committee any authority to either approve or disapprove, and is it not simply an inferential authority, if one exists?

Mr. BYRNS. That is true.

Mr. DEMPSEY. Second, is it not the fact that this committee did make the investigation which it is authorized to make, and was not that made in the manner that the law provides?

Mr. BYRNS. I assume it was. Of course, I do not know just how full or how thorough the investigation was.

Mr. DEMPSEY. And, lastly, is it not the fact that while the committee did not exceed its authority or exercise a purely inferential authority by approving, it did not disapprove.

Mr. BYRNS. That is true. It failed to take any action, and the whole point I was seeking to make is this. Whether it is written in the law or not, certainly Congress expects that the committee should do something more than merely receive these claims when it appropriates and provides $40,000 to provide experts for the purpose of considering them; and after that investigation, in the face of the fact that a motion was made in the committee to approve the claim, the joint committee refused to take the responsibility of approving or disapproving, and under those circumstances I, as a Member of Congress, knowing nothing about the subject, am not willing by my vote to tax the people of this country with $75,000,000 without further information or some safeguarding amendment.

Mr. DEMPSEY. Will the gentleman yield for a further question? If Congress intended this joint committee to either approve or disapprove or to make a report to the Congress upon the investigation which it was to make, is not Congress the one to criticize and not the joint committee and not those who are compelled to act in accordance with the law as it is enacted instead of with a law not enacted, and according to terms which we think should have been put into the law?

Mr. BYRNS. Well, the gentleman knows there were propositions made at the time to clothe the joint committee with just the authority to which the gentleman refers, but the Treasury Department objected, and the best that could be done was to secure the kind of law that we have upon the subject. I am not criticizing the joint committee. I am simply saying that we, as Members of the House, should not undertake to vote this money in the face of the fact that the joint committee after such investigation as it chose to make, with the aid of the experts provided by Congress, refused or failed to take any action whatsoever on the matter. And when we vote to appropriate this money then we undoubtedly are approving the claims in the face of their action.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. BYRNS. Yes.

Mr. LAGUARDIA. Then we are to understand that the joint committee, as a matter of fact, did take affirmative action in respect of some claims and failed to take action in respect of other claims, is that true?

Mr. BYRNS. No; I do not know that the joint committee has ever taken any action with reference to any claim, but they did fail to take action on this claim, despite the fact a motion was made to approve it; and that, in itself, carries the inference that there was in the minds of the joint committee, composed of Senators and Representatives, some doubt, at least, as to whether the claim was a proper claim to be paid; and under these circumstances I repeat for the third or fourth time I am not willing to vote for this appropriation.

Mr. DEMPSEY. If the joint committee, if the gentleman please, had taken action, it would have been an isolated, single case, exceptional, and assuming an authority not conferred upon them by the law.

Mr. BYRNS. But assuming an authority which I believe that Members of the House believed they ought to and would assume when they voted $40,000 per annum out of the Treasury to give them expert assistance.

Mr. DEMPSEY. But if they wanted it they should have put it in the law and not left it to inference.

Mr. BYRNS. I do not think there can be any doubt about the purpose of the Congress in appropriating the money to which I have referred; otherwise, if we are to follow the idea of the gentleman from New York [Mr. DEMPSEY] they would need no experts. It is an entirely useless committee, unnecessary, and simply involving expense to the Government for nothing.

Mr. DEMPSEY. No; what they want, if the gentleman please, is the eye of publicity upon claims. They have that through the investigation made by the committee. It is given full publicity. Everybody knows what has been done, what the claim is, what its nature is, the reasons for its payment, and the matter is fully aired and given to the public. We have the benefit of that investigation, when the matter comes before us, to enable us and help us to decide correctly in connection with the recommendation of the Treasury.

Mr. BYRNS. Let me ask the gentleman this question: Having the power, as the gentleman suggests, to make a thorough and full investigation of the claims over $75,000 sent forward, having been provided with all the expert machinery that the committee said it needed or wished, after the committee has made an investigation, if the members of that committee who have the same responsibility that the gentleman from New York has and that I have, and a greater responsibility on account of their connection with that committee, after a motion is made to approve a particular claim, fail to approve it after such hearing and investigation, is the gentleman who has made no investigation, who has no information in regard to the matter, except that the Treasury Department has found that so much is due, willing to vote the money out of the Treasury?

Mr. GARNER of Texas and Mr. BACON rose.

Mr. DEMPSEY. Let me answer the gentleman. There was every reason and the best of reasons why the joint committee should not be clothed with the authority which the gentleman says it should have had, and that reason is this: The committee was given the power to investigate, but not given the power to report because of two things; one of them very vital to this House, to its jurisdiction, to its standing and importance in the counsels of the Nation. Shall we share with the Senate the right to originate money bills?

Mr. GARNER of Texas. No; we do not propose to do that.

Mr. DEMPSEY. Oh, yes, you do. The instant you consent that a joint committee made up partly of Members of the Senate shall join in recommendations to this House as to a matter of which the House has sole, original jurisdiction, you are depriving this House of the greatest function, the most valuable function, the function which gives it more power, more prestige, a greater standing in the Government than any other power it exercises.

Another reason for not presenting any report, and the controlling reason, was this: The House knew that the report comes from the Appropriations Committee, of which the gentleman from Tennessee is an ornament, of which he is not only the ranking minority member but a man of such standing and ability that we all pay the greatest heed to his suggestion. The instant you confer upon the joint committee the power which belongs and should belong solely and entirely to the committee of which the gentleman from Tennessee is an ornament, you are taking away from your committee the jurisdiction to which you are entitled, which you should hold and preserve as sacred not only for yourselves but for all who come after throughout the history of this country.

Mr. CRISP. Will the gentleman yield?

Mr. DEMPSEY. I have not the floor, but I have no doubt the gentleman from Tennessee will yield.

Mr. CRISP. I would like to have the gentleman from New York cite me to any provision of the Constitution or any other law giving exclusive jurisdiction to the House of Representatives to originate appropriations.

Mr. DEMPSEY. All money bills must originate in the House.

Mr. CRISP. The gentleman is in error; it is only all revenue bills.

Mr. DEMPSEY. And all tax bills.

Mr. BYRNS. I think it is admitted, and it has been ruled a number of times that only revenue bills are required to originate in the House. It has been the custom from time immemorial for all appropriation bills to originate here.

Now, I am going to conclude, for I am taking up the time of others.

Mr. GARNER of Texas. May I make a suggestion in reply to the gentleman from New York?

Mr. BYRNS. I yield.

Mr. GARNER of Texas. The joint committee created by Congress to examine these returns has its agents and employees to make an investigation. The employees of the committee have criticized and have declined to approve this settlement paid by the Treasury Department. When we were having the hearings on the steel corporation report the Assistant Secretary of the Treasury stated that if they disapproved of this he would not pay it, although there was no law compelling him to do it. They recognized that it had some jurisdiction and had some power, whether the gentleman from New York does or not. As to the functions of this committee, he may be of the same opinion as was the gentleman from Indiana during some hearing when he said it was not worth a damn. [Laughter.]

Mr. DEMPSEY. The gentleman has made two statements. He says the Secretary of the Treasury, interpreting this statute, said that if they disapproved it he would not pay it. That is not in point here, because again and again it has been stated that the committee neither approved nor disapproved. So we are not in the position to which the gentleman refers. What he says has no pertinency, no relevancy, no bearing at all on the issue.

Now, the gentleman from Texas states the most surprising thing to me, that some employee of this committee said something. What difference does that make? This is the first time in the discussion of matters on the floor, I will venture, that

any gentleman has ever accredited an employee not designated, not named, as having made a statement which should have any weight or influence in Congress in determining what its action should be.

Mr. BYRNS. Now, in closing let me say this: My good and very able friend from New York, for whom I have a great regard, personally and officially, has wholly failed to answer the question I asked a while ago. I am not going to press him for an answer, but, assuming that he is correct with reference to the joint committee, I simply want to say that if he votes for the $75,000,000 for the refund of taxes in this bill he is voting to approve the finding on the part of the Treasury that the Members of the House of Representatives on that joint committee failed to approve or disapprove.

They have money enough to run until February. What harm can there be in cutting this appropriation out of this bill and taking it up in the general deficiency appropriation bill in February, so as to enable that joint committee to function as some of us when we voted these various annual appropriations expected it to function?

Mr. BACON. Mr. Chairman, will the gentleman yield?

Mr. BYRNS. Yes.

Mr. BACON. Was any motion made in the joint committee to disapprove of any of this?

Mr. BYRNS. I do not know. That will be explained later by some gentleman who is going to take the floor. I do not know what was done in the joint committee.

Mr. BACON. As a matter of fact no motion was made to disapprove it.

Mr. BYRNS. I am not a member of the joint committee, and I can not state what they did.

Mr. Chairman, I yield 30 minutes to the gentleman from Mississippi [Mr. COLLIER].

Mr. COLLIER. Mr. Chairman and gentlemen of the committee, I shall address my remarks to that part of the bill under discussion which relates to these tax refunds, and especially to the tax refund to the United States Steel Corporation. I am not going to-day to make any charges of any sinister or ulterior motives on the part of anyone. Notwithstanding the fact that my good friend from Kansas [Mr. ANTHONY], whom we are all so delighted to see back in his seat [applause]; notwithstanding he has injected partisanship into this matter, I shall try to free myself, as I do in tax discussions as differentiated from tariff discussions, from partisanship. Of course, it is an old story that whenever the opposition party gets itself into difficulty, as it has in this instance, it is, according to the opposition, always because of something that happened overnight during the Democratic administration. I heard one of the great statesmen of this country during the last campaign over the radio, speaking for the opposition party, state that the farm problem had not been ever properly depicted. He then went on and described it in all its details, and said that all the trouble had been brought about overnight because of the action of some Democratic official. We are used to that sort of charge; and therefore the charge of the gentleman from Kansas [Mr. ANTHONY] that all the trouble in this case was due to the action of a Democratic Secretary of the Treasury is not surprising.

We are confronted to-day with a concrete question which is technical in its nature. It was impossible for the Joint Committee on Internal Revenue Taxation to go into this matter as it should be done; and for that reason, let me say, in answer to the question of the gentleman from New York [Mr. BACON], there was no motion made to disapprove this settlement, because, after listening to five hours' discussion of a matter that had been going on in the Treasury Department for over 10 years, no member of that committee was able to determine whether the proposed settlement was a correct and proper one or not.

The Joint Committee on Internal Revenue Taxation, as you have already been informed, has lately been engaged in a review of the proposed refund of taxes and interest in the amount of $26,000,000 to the United States Steel Corporation. The revenue act of 1928 imposes upon the Treasury an obligation to submit to the Joint Committee on Internal Revenue Taxation all proposed refunds in excess of $75,000.

There seems to be some confusion in reference to the Joint Committee on Internal Revenue Taxation.

This committee is not a creature of the rules of the House and Senate like standing Senate and House committees, but it is a child of the statute. When the provision authorizing the creation of this committee was adopted it aroused little comment, and few realized the important work this committee would soon be called on to do.

In the minds of the Members of the House for the most part the controlling idea was that the committee might be useful in making suggestions for the simplification of administrative provisions in internal revenue laws. The prevailing thought in the Senate seemed to be that it would be an investigating committee, a kind of grievance committee that would be permanent and would take the place of the various investigating committees that from time to time had been thought necessary to be created by that body. While both the House and Senate were right in their conclusions, yet the work this committee has been doing is on a much larger and more comprehensive scale than few if any of us realized when the committee was created.

The simplification of many administrative provisions in the revenue act of 1928 testifies to the good work of the committee in this regard. This simplification was due in a large measure to the work of the splendid staff of experts employed by the committee, who were ably assisted by many noted political economists who generously gave us their time and labor without any remuneration from the Government.

The United States Steel Corporation tax case is an inheritance of the excess-profits tax. The taxes involved are for the year 1917, and there are still remaining unsettled in the Treasury over 800 cases for that year.

The delay in the settlement of nearly all of these 1917 tax cases, together with a considerably larger number of later cases, is due to the difficulty the Treasury has experienced in the administration of the provisions of the excess-profits tax in computing consolidated returns of corporations.

The crux in the administration of this tax is the determination of the amount of invested capital of the corporation, because the amount of the invested capital is the basis upon which the tax is levied. A certain percentage of profits based upon the amount of capital invested was exempt from taxation. All profits in excess of the exemption were subject to the excess profits tax.

It was comparatively easy to find the amount of capital invested in the case of an individual corporation. The difficulty lay in determining the consolidated invested capital of a parent corporation and its subsidiaries. In some instances the parent corporation would not only have a number of subsidiaries, but the subsidiaries in turn would have their subsidiaries.

The United States Steel Corporation has perhaps more important affiliations than any other corporation in the United States. There was first the parent, the United States Steel Corporation. Then the children, who were 13 in number, including such sturdy youngsters as the Carnegie interests and 12 others of almost equal importance. These 13 children had a numerous progeny consisting of their subsidiaries who were the grandchildren of the parent, the United States Steel Corporation. Nor did it begin to stop there, for these grandchildren had their offspring, and these subsidiaries were the great grandchildren of the parent, the United States Steel Corporation. A strong and lusty family consisting of parent, children, grandchildren, and great grandchildren which made a total of 195 subsidiaries with a combined capitalization of approximately $1,500,000,000.

Instead of making 195 separate tax returns, taking advantage of the revenue law permitting corporations to make a consolidated return, the United States Steel Corporation made one tax return for the entire consolidation.

In determining the method to pursue in finding the amount of consolidated invested capital the Treasury in 1919 adopted a certain regulation, which was continued in force until the Court of Claims, in an opinion rendered in the case of the United Cigar Stores, upset the Treasury regulation.

This new method of computation in the case of many corporations would result in a material difference in the amount of the consolidated invested capital of the corporation. Almost immediately upon the heels of the decision by the Court of Claims in the United Cigar Stores case, which had upset the Treasury regulation, the Board of Tax Appeals, in the Grand Rapids Dry Goods case, handed down a decision providing for another and a different method of computing the amount of invested capital of a consolidated corporation.

Let us now return to the case of the United States Steel Corporation. The first return made by the corporation was on April 16, 1918, and the final audit was made within the last few weeks. It is regrettable that it has taken over 10 years to arrive at a final settlement in this case and that there are thousands of cases almost as old as this one that are still unsettled in the Treasury.

While the delay in this case appears to be unreasonably long, yet candor and fairness compel the admission that the Treasury was confronted with many unforeseen difficulties in the adjudication of this matter. Not only did the Treasury have to deal with a gigantic corporation making one tax return for 195 subsidiaries, each of which was a huge and complex corporation in itself, but because of divergent court opinion which had

upset its own regulations the Treasury was forced to unexpectedly adopt a new method of computing consolidated invested capital.

Also in a consolidation as large as the United States Steel Corporation a vast amount of clerical work was involved. Assistant Secretary Bond tells us that the documentary evidence alone was so voluminous that it would constitute several truck loads of physical matter, and that the final letter written by the Treasury to the steel corporation consisted of over 2,400 typewritten pages.

I want to be fair in the discussion of this proposed refund, and therefore, knowing the unforeseen difficulties confronting the Treasury in the adjustment of this case, I shall not criticize any official of the Treasury on account of the long delay in its final settlement. I do not charge that there is anything actually wrong or improper about the amount arrived at in the final audit. I do not charge that any sinister or improper motive actuated anyone connected with the Government who was engaged in working on this matter. I can not look into the human heart and see what is written there. I never charge nor do I intimate that a bad motive exists unless I am reasonably sure that it does.

The Treasury officials tell us that this is the best settlement that could have been made. I am unable to say whether the amount arrived at is a just and a fair one, because I do not know. Both Democratic and Republican Treasury officials have been working on this case for over 10 years. I heard less than five hours' discussion of the Government's side of the taxes involved, and it would be folly for me to say that the amount of the refund due the steel corporation is fair or unfair.

Mr. MOORE of Virginia. Mr. Chairman, will the gentleman permit me to interrupt him right there?

Mr. COLLIER. Certainly.

Mr. MOORE of Virginia. At one time did the joint committee or any of its agents have any contact with the Treasury in regard to the settlement of this claim?

Mr. COLLIER. It had; one day and one night.

Mr. MOORE of Virginia. Then the committee was not in cooperation with the Treasury Department in any way in trying to ascertain the amount that should be paid?

Mr. COLLIER. Not at all. Now, in further answer to the gentleman's question in reference to that, the joint committee was notified by our staff of experts. This was a case that they would not even pass upon, because there were such unusual features in the matter, including the unusual method adopted by the Government of finding the consolidated capital in this case.

While I do not charge the Treasury with unnecessary delay in the settlement of this case or that any sinister or improper motive existed, or even that the terms as finally agreed upon between the Government and the Steel Corporation are unjust or unfair, yet I do protest against the methods employed by the Treasury Department in the final adjustment of this matter. I make this protest against the unusual methods employed by the Treasury in arriving at the consolidated invested capital of the Steel Corporation, even if the computation is correct and is for the best interests of the Government in dollars and cents, because I believe that the methods pursued, after over 10 years of consideration, are unjust and unfair both to the Government and the taxpayers of the United States.

I am willing to admit that in arriving at the method of determining the amount of consolidated capital in this case, the Treasury found itself, through, perhaps no fault of its own, in a perplexing dilemma. Its own regulations had been overruled by the decision of the Court of Claims in the United Cigar Stores case, and in the Grand Rapids Dry Goods case, the Board of Tax Appeals had set up a still different method of computing the amount of invested capital. These different methods were antagonistic and only one of them could be right.

It was important to the Government and it was important to the taxpayers of the United States to know which one of these three different methods was the proper one to pursue in the settlement not only of the Steel Corporation case but of the thousands of cases still pending in the department in which the same principle was involved.

In the dilemma in which the Treasury found itself, confronted by three different and antagonistic methods of determining the crux of the excess-profits tax, the consolidated invested capital of the corporation, what did the Treasury do?

Its own regulations had been overruled by a court of competent jurisdiction which set up a different method, which in turn had been overruled by the decision of a tribunal created by Congress to specifically pass upon just such questions. In this apparent impasse, what did the Treasury do? Which one of the methods did it pursue in arriving at the present settlement? How did the Treasury find the amount of consolidated invested capital of a corporation whose capitalization was estimated at approximately $1,500,000,000 and in which there was a dispute in the estimated amount of taxes of over $100,000,000?

Did the Treasury follow its own regulations in defiance of the decision of the Court of Claims and the opinion of the Board of Tax Appeals? No. Did the Treasury then ignore the opinion of the Court of Claims and adopt the rule laid down by the Board of Tax Appeals? No. Did the Treasury then reject the opinion of the Board of Tax Appeals and follow the decision of the Court of Claims? No. What then did the Treasury do?

Mr. WHITTINGTON. Will the gentleman yield?

Mr. COLLIER. I will.

Mr. WHITTINGTON. Is there any appeal from these decisions on the part of the Government so that the Supreme Court of the United States would finally pass upon the method of computation?

Mr. COLLIER. That is what I am coming to, and that is the milk in the coconut. What did the Treasury do?

The Treasury ignored its own regulation, disregarded the decision of the Court of Claims, rejected the opinion of the Board of Tax Appeals, and after over 10 years' consideration of perhaps the most important case before the department ventured upon an unknown and uncharted sea of administrative procedure. Instead of going to the highest authority to find out which one of the three methods of computing the consolidated invested capital of a corporation was the proper one, the Treasury tried something new and unusual. The Treasury officials called into consultation the officials of the Steel Corporation.

At this consultation all the evidence and documents in the case were laid upon a bargain table. It was a case of give and take. They haggled and bargained, and bartered and traded, and receded and conceded until the tax paid by the United States Steel Corporation in 1921 had been reduced in an amount exceeding $44,000,000, together with interest amounting to $11,000,000 additional.

If the unusual methods of arriving at the consolidated invested capital of the Steel Corporation could be used as precedent in the settlement of those cases now pending in the department, as unwise and as unscientific as these methods were, they might be excused upon the idea that a fixed and definite rule of administrative procedure had been established.

But the Government of the United States is denied the privilege of even that trifling compensatory benefit, for both the Treasury and the steel corporation have expressly stipulated that neither the one nor the other would be bound by any of the methods employed in this settlement in the adjustment of any other case now pending.

It is unjust and unfair to the Government and it is unjust and unfair to the taxpayers of the United States that a settlement of this character—one that has not only been pending for over a decade but involves hundreds of millions of dollars—it is unjust and unfair, both to the Government and the taxpayers, that a final settlement should be made without the Government's adopting a fixed rule of administrative procedure. This could have been accomplished by securing from the Supreme Court, the highest court in the land, a definite, fixed method of procedure, which in the future could be used as a precedent by which pending claims could be settled.

Secretary Bond tells us it would take too long, and require too much time to take this case to the United States Supreme Court. Oh, yes; it probably would now, but the United Cigar Stores case was already in the Supreme Court. It was there awaiting a decision from that court of last resort, as to whether the Treasury regulation or the decision of the Court of Claims were correct.

A decision in that case would have settled the principle and there would then have been no need for an opinion by the Board of Tax Appeals, for the highest court in the land would have spoken.

This case was before the Supreme Court and ready for trial, but it was dismissed by the Solicitor General of the United States. Did the Solicitor General make the motion of dismissal on his own initiative? No; it was made, according to the testimony of the Treasury officials, only after he had conferred with the General Counsel of the Internal Revenue Bureau. Had the General Counsel of the Bureau of Internal Revenue permitted this case to be decided by the United States Supreme Court all doubt and uncertainty would have been at an end. Had the highest judicial tribunal in the land spoken, and placed the seal of its approval upon either the Treasury regulation or the decision of the Court of Claims, a precedent would then have been established by which the thousands of unfinished cases now in the Treasury could have been quickly brought to a speedy settlement.

But instead of this, after more than 10 years' discussion and adjustment and readjustment costing the Government thousands of dollars, a useless, conglomerated, heterogeneous arrangement was entered into by the Government and the Steel Corporation, and using the exact language of Secretary Bond, "as a result of concessions and offsetting" the original tax of $217,577,594.22 as audited by the Treasury and was paid into the Treasury by the Steel Corporation was reduced to $173,377,731.42 in the final audit of a short time ago, a reduction of over $44,000,000 together with interest amounting to $11,000,000.

The different audits of this tax made by the Treasury officials at separate intervals are interesting. There were three different audits under the Wilson administration before final settlement was made. There were then five different audits made during the Coolidge administration. I have prepared a table showing these different audits, and ask permission to insert this table in the RECORD.

I do not do this because I wish to reflect upon the honesty or integrity of anyone connected with the Treasury. This comparison is not for the purpose of intimating that any improper or sinister motive existed. I am not denouncing anybody's motives, but I am denouncing the methods of computation used in the case, and I am presenting this table as an indication of what we may expect when a haphazard, conglomerated method of computing consolidated invested capital is attempted. When all the documents are laid upon a bargain table and the haggling, bartering, trading, offsetting, and conceding begin, some one is going to get the worst of it. The shrewdest trader will always win. I do not believe that matters of such importance to both the Government and the taxpayers should be settled in any such uncertain and haphazard way.

Now I am going to try to explain this table. I do not have a blackboard here, but I wish I had. I will consider this table here all that happened in the Wilson administration and this table here all that happened during the Coolidge administration—not during the Harding administration, because this Steel Corporation tax case was lying sound asleep for nearly five years.

On April 18, during the Wilson administration, the United States Steel Corporation——

Mr. CRISP. April 18 of what year?

Mr. COLLIER. April 18, 1918. I thank the gentleman.

The United States Steel Corporation filed a return, which everyone would know was incomplete at that time, of $199,850,857.46, showing a return of that much tax which they owed.

On December 29, 1919, they filed an amended return. This is the United States Steel Corporation's own return. They filed an amended return, not an audit of the Government, of $207,041,023.17.

Then, on December 3, 1920, just about one year later, still under the Wilson administration, the audit made by the auditors in the department found the amount to be due was $213,410,520.92.

Then, about two months later, February 14, 1921, they made another audit in the Treasury Department and they found the amount of the tax to be $213,577,594.22.

Then, in 1921 the final audit was made of $217,577,594.22, which amount was paid by the United States Steel Corporation.

Now, my friends, on this side of the table [indicating] are the returns and audits to which I have referred. There are one, two, three, four, five steps, each step in favor of the Government of the United States and each step against the taxpayer, the United States Steel Corporation.

First, in 1918, there was the original return, then a year afterwards about $7,000,000 more, then about a year afterwards $6,000,000 more, then two months afterwards about $200,000 more, and then the final audit in 1921 of $217,577,594.22, which was paid, and we all forgot about the case until about three days after Christmas in 1925, five years afterwards.

Now, I will get on this side of the table. On this side of the table are the audits made during the Coolidge administration. The first audit was made on December 28, 1925, and that audit reduced the amount of the final audit under the Wilson administration from $217,577,594.22 down to $194,896,627.39.

Then about 11 months later, in 1926, on November 24, there was another audit. They reduced the tax then about $35,000, still, however, a step downwards, a step against the Government, and a step in favor of the United States Steel Corporation.

Then in December, 1927, there was a big jump downward and they found then that the Steel Corporation only owed $190,350,232.71.

Then in about two months—February 15, 1928—they found that the Steel Corporation only owed $189,197,786.86.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. BYRNS. I yield the gentleman five minutes more.

Mr. COLLIER. Then came the final audit. It was made several weeks ago and that audit, the final one, was $173,377,731.73.

The increase in favor of the Government from April 18, 1918, to the final audit in 1921, through the different steps, was $17,726,736.76.

The decrease against the Government, not starting in 1921, but starting two days before 1926, as the case slept over five years—the decrease against the Government and in favor of the taxpayer from the 28th of December, 1925, to the final audit, was $44,189,826.49 and interest of $11,000,000.

Gentlemen, I repeat that I am not making this comparison for the purpose of attacking the motives of anyone. I am making this comparison to show that when we lay everything on a bargain table and depart from settled rules of procedure anything may happen and this is what you may expect.

The next case that we place on the bargain table it may be the Treasury officials will be shrewder than the officials of the corporation. I hope so for I do not think our boys had much chance with the officials of the United States Steel Corporation. It has been stated that it was a case of give and take. There is no doubt about that. The Treasury did the giving and the Steel Corporation did the taking. I am not attacking anybody's honesty. I am making this comparison to show you what we may always expect when such unwise and unscientific and unusual methods are pursued.

Mr. GIFFORD. Will the gentleman yield?

Mr. COLLIER. I will be pleased to yield to the gentleman.

Mr. GIFFORD. Since I think the gentleman approves of section 606, since he says the Treasury Department has no ulterior motive and since he absolves the Treasury Department in general, I wish the gentleman in closing his remarks would ask this House to rise and give three cheers for the income-tax method of raising our revenue.

Mr. COLLIER. My time is exhausted.

Mr. ABERNETHY. Will the gentleman yield?

Mr. COLLIER. I yield if I have any time remaining.

Mr. ABERNETHY. This $75,000,000 that is being contested here, does not that include a number of cases in which there is no dispute?

Mr. COLLIER. The gentleman's question brings a new thought to my mind, which I hope the gentleman from Tennessee will give me time to answer.

Mr. BYRNS. I yield to the gentleman two minutes more.

Mr. COLLIER. I will say that this is only about one-third of the refunds in the bill. This refund amounts to $15,000,000 and interest of $11,000,000. I want to say that the Treasury should be criticized for permitting this matter to go along for that length of time, where we are going to lose $11,000,000 in interest. That is not a good business proposition.

Mr. DEMPSEY. Will the gentleman yield?

Mr. COLLIER. Yes.

Mr. DEMPSEY. The gentleman, I understand, has suggested that the time should be postponed for the settlement and the interest is running at 6 per cent.

Mr. COLLIER. The gentleman misunderstood me. I was not talking about a postponement, I am talking about the Treasury settling this matter in such a hodge-podge way, and discarding all business principles of procedure. I am not willing as a Member of the House to approve any such settlement made in such a haphazard way.

Mr. DEMPSEY. The gentleman states that in five hours he was fully unable to absorb that which had taken 10 years——

Mr. COLLIER. Oh, the gentleman misunderstood me; I did not know whether it was good or bad.

Mr. WHITTINGTON. What reason was assigned for dismissing the Government case in the Supreme Court?

Mr. COLLIER. I never heard any reason. [Applause.] I ask unanimous consent to extend my remarks by inserting certain papers.

There was no objection.

United States Steel Corporation income-tax audits from 1918 to final audit in 1928

WILSON ADMINISTRATION		COOLIDGE ADMINISTRATION	
Final audit, 1921	$217,577,594.22	First audit, Dec. 28, 1925	$194,896,627.39
Feb. 14, 1921	213,577,594.22	Nov. 24, 1926	194,861,124.00
Dec. 3, 1920	213,410,520.92	Dec. 20, 1927	190,350,232.71
Dec. 29, 1919	207,041,023.17	Feb. 15, 1928	189,197,786.86
First audit, Apr. 18, 1918	199,850,857.46	Final audit	173,377,731.73
Increase in Wilson administration in favor of Government from from Apr. 18, 1918, to final audit, in 1921, $17,726,736.76.		Decrease in Coolidge administration against Government and in favor of taxpayer from 1921 to final audit in 1928, $44,199,826.49.	

THE THREE DIFFERENT METHODS OF COMPUTING CONSOLIDATED INVESTED CAPITAL

1. The Treasury Regulations:

The regulations (the rule having been in force since 1919) treat the transaction, in accordance with the business or accounting view, as though the parent corporation actually acquired the assets of the subsidiary, rather than the stock, and provide that there should come into consolidated invested capital the value of the tangible and intangible assets of the subsidiary at the time of the transaction, thus subjecting intangible assets of the subsidiary to the 20 per cent limitation.

2. The United Cigar Stores decision:

The Court of Claims, in the case of the United Cigar Stores Co. of America v. United States, held that there should come into consolidated invested capital the value of the stock of the subsidiary at the time acquired by the parent company. The Court of Claims agrees with the regulations in that the valuation should be at the time the stock of the subsidiary is acquired by the parent, but under this decision the limitation upon the intangibles is not applicable and apparently the limitation upon "inadmissibles" (i. e., stock of another corporation) is not applicable. In reaching its decision, the Court of Claims reasoned that since stock, a tangible asset, was acquired, the bureau was not justified in saying that tangible and intangible assets were acquired and then subjecting the intangible assets to the limitation provision prescribed in section 207.

3. The Grand Rapids Dry Goods Co. decision:

The Board of Tax Appeals, in the appeal of Grand Rapids Dry Goods Co. (June 19, 1928), differs with both the bureau and the Court of Claims as to the time the assets of the subsidiary should be valued in computing consolidated invested capital. The board holds that the subsidiary's invested capital should be computed separately under the provisions of section 207. Under this theory the cost of the stock to the parent is disregarded, and it is necessary to go back to the original incorporation of the subsidiary in order to determine the amount of cash paid in for stock, tangible property paid in for stock, intangible property paid in for stock, and its earned surplus and undivided profits accumulated between the time of its original organization and the time of the acquisition of its stock by the parent company. Briefly, the effect of this rule is that all appreciation and depreciation in the value of tangible property from the time it was paid in to the subsidiary to the time the parent acquired the subsidiary's stock, will be disregarded, and the value of the intangibles developed by the subsidiary will be disregarded. Obviously, the subsidiary's invested capital so computed would in the ordinary case be quite different from a computation based on a valuation as of the time the subsidiary's stock is acquired by the parent company. The board would trace the assets of the subsidiary back to its organization, whereas the bureau and the Court of Claims would make the valuation at the time the parent acquired the subsidiary's stock.

Mr. WOOD. Mr. Chairman, I yield 30 minutes to the gentleman from Oregon [Mr. HAWLEY].

Mr. HAWLEY. Mr. Chairman, not long since the gentleman from Texas [Mr. GARNER] in some remarks made on the floor of the House, made several criticisms of the operations of the Treasury Department. Of course the gentleman from Texas is entitled to his opinion and others are entitled to differ from him. I propose to undertake in the short time at my disposal to state the differences I have in mind.

He called the attention of the House to certain refunds in cases of taxes where refunds justly due and payable under the law and to be paid during this fiscal year. As a result, an improper stress was laid on the refund side of the Treasury operations.

He finds that $205,000,000 would be used in refunds, but he did not say that in the same period the Treasury would collect $245,000,000 in deficiencies and back taxes.

For instance, for the fiscal years ending June 30, 1926, 1927, and 1928, refunds in the total sum of $447,918,284 were made. But back taxes and deficiencies were collected to the amount of $980,294,484—the excess of back taxes and deficiencies being $532,000,000.

So the Treasury has been as active in collecting taxes due from those who have not paid the correct amounts as it has in refunding money in settling claims which have been accumulating and came down in a large part from improper administrative methods used by the preceding Democratic administration which clogged the court with cases and which refused to accept the responsibility for their settlement. The Treasury is endeavoring to get rid of these cases because every day they are costing the Government 6 per cent interest until they are finally adjusted and paid.

The Treasury Department has a very difficult task in the settlement of many of these claims, for instance, in the one just cited. That task involves all of the difficult matters of taxation—the 1913 value, invested capital, inventory, depreciation, depletion, and obsolescence, and the Congress of the United States and the Committee on Ways and Means for years have insisted that operations of the Treasury be brought current. The present Treasury officials are endeavoring to do that. In order to determine what the 1913 value means in any case, it is necessary for the Treasury to employ a number of engineers, real estate experts, accountants, and so forth, to find out what was the probable value of a certain plant in 1913, many years ago, eight years at least, in the cases now pending. This was a matter of judgment. The engineers will differ. The Treasury engineers will fix one value, the engineers of the corporation or individual reporting will fix another value, and independent engineers will fix a third value. Which is the correct value? No one can say with mathematical accuracy. Consequently, a conclusion must be reached that is satisfactory to both sides, or the case must be sent to the courts for determination. The courts are manifestly slow in deciding cases, and all the delay that occurs in the courts is costing the United States in interest many millions of dollars. The case of the United States Steel Corporation has been cited, to which I shall refer a little later, but that is not the only large refund pending for settlement. The Supreme Court of the United States last summer decided the case of the National Insurance Co., which involved refunds to the extent of $35,000,000, much larger than the present proposed settlement with interest accrued to date of settlement added.

It is proposed now to defeat the $75,000,000 of deficiency for the payment of refunds. The gentleman from Texas [Mr. GARNER] made an error of $20,000,000 in his statement the other day when he stated there would be $75,000,000 more than the original estimate. The original estimate was $150,000,000 and the present addition is to be $55,000,000, to what was formerly asked, or $205,000,000.

If the proposed increase of $75,000,000 of deficiency appropriations for payment of refunds is defeated, the Steel Co. and the life insurance company will not be affected, because the Steel Co. case is paid to-day and the life insurance companies, I think, have been paid in part, at least; but it will mean that some 50,000 taxpayers having small amounts of refunds due them—and probably needing them—will have to delay until a subsequent deficiency bill is passed, which in all orderly expectation would be at the session of Congress beginning next December. Meanwhile the Government, on all these ascertained deficiencies is paying 6 per cent interest, or $4,500,000 a year on the $75,000,000, or $12,000 a day, and that will be the burden on the revenues for the defeat of this proposed deficiency. And no good purpose would be served unless the Government intends to delay, and then to not finally pay, for sooner or later, if the Government intends to pay, it must pay, and all delay is expensive to the Government. Why, then, not pay promptly and save the Treasury what amount we can in that regard?

Mr. SPROUL of Kansas. Mr. Chairman, will the gentleman yield?

Mr. HAWLEY. Yes.

Mr. SPROUL of Kansas. The House should be interested in knowing whether or not the amount of $75,000,000 or any part of it is really due to be refunded. Their mere conclusion to come to us would not be sufficient information for us to act upon.

Mr. HAWLEY. I will ask the gentleman to be as brief as possible in his question.

Mr. SPROUL of Kansas. The gentleman states that we would be paying 6 per cent interest and that fact should be an inducement to pay, but surely we should not talk about those matters until we are assured that we owe this sum.

Mr. HAWLEY. I take this ground, and very frankly, and I think it is the right one in view of the facts and the certainties of the case. The Treasury Department at first took the view that with the Board of Tax Appeals, which was organized in 1924, we could meet the situations that have arisen. The Board of Tax Appeals has made some progress in reducing the number of cases coming to it. It is an active, diligent board, but many new cases come to it, leaving a considerable accumulation of undecided cases. So, in order to expedite the settlement, they organized an advisory board in the Treasury Department, consisting of 12 of the most expert people, able and experienced men in the department, including all branches of the work, for the purpose of expediting settlements. The experienced men thoroughly familiarize themselves with all the facts in a case, and in greater detail than could be done in an ordinary way, because their facilities are greater. Their decisions are entitled to faith and credit.

These 12 men sit as a court, as it were, to decide the facts in all these large disputed cases. They are as competent men as any ordinary court in the country. Some of them are the most expert tax officials in this or any other country. After long examination, after examining all of the evidence, having employed experts of all kinds to ascertain the facts, they come

to the conclusion that a certain amount of money is due from a taxpayer, or that a certain amount is due to a taxpayer. They report that fact here. A court does not report to us, especially the Supreme Court. It reports a judgment, and the Court of Claims reports a judgment with a brief statement of facts.

Mr. LAGUARDIA. A court matter is a matter of record, and anybody has access to it, but not to the records of the Treasury Department.

Mr. HAWLEY. That is not the fault of the Treasury Department; that is a provision of law.

Mr. LAGUARDIA. The two cases are not analogous.

Mr. HAWLEY. I agree they are not entirely analogous, but I was speaking more to the point of the ability of these men to decide the questions. I believe these men are interested in the welfare of the Government and in securing from the taxpayer all the money that he should pay. In fact, there has been criticism of the officials of the Treasury Department that they were inclined to take the very last dollar from the taxpayer that it was possible to secure from him under any construction of law.

Mr. LOZIER. This controversy involved disputed questions of law and fact. Does not sound public policy suggest that those disputed questions of law and fact be determined by a court?

Mr. HAWLEY. Yes; and I can answer the gentleman's question without his making an argument about it. That is being done now. Where the matter involves mixed questions of law, or mixed questions of law and fact, where the taxpayer believes himself aggrieved, or the Government feels that the taxpayer is not willing to comply with the law written, those cases go to the courts, and those are the ones that should go, but all other matters that are simply matters of judgment, administrative regulation, or decision should be decided in the department administratively.

Mr. LOZIER. Is it not true that the disputed questions of law and fact involved in this case, namely, the amount due, were not submitted to the court, and that the decision of the Treasury Department does not establish a precedent that has the force and finality of a judicial decree?

Mr. HAWLEY. I am interested to know what questions of law arise here, or what mixed questions of law and fact arise. The gentleman from Texas [Mr. GARNER] attacked the Treasury Department on its estimates. That is a favorite subject of attack on the part of the gentleman from Texas. He is always entertaining. I have often wondered why he did not seek a wider amphitheater for the exhibition of his aptitudes along that line. It might be remunerative to the gentleman. [Laughter.]

However, whose estimate shall we follow? Shall we follow that of the gentleman from Texas, who missed it only about $175,000,000 when the revenue act of 1928 was in course of preparation, and including his estimate on the Treasury condition this year he has missed it only $200,000,000? I fear to follow the gentleman from Texas. What did the Treasury do? In the last few years it has made various estimates of income and expenditures. They have varied from the realized amounts to some extent; that is true. I will set out the facts in the case more fully in the extension of my remarks. But there were changes in the law. Also all taxes depend, of course, upon the progress of business; and coupled with that were questions of the sale of securities, questions involving alien property, questions concerning the sale of war materials, and other questions. These increased the difficulties in making estimates of receipts. We have now largely disposed of those nontax and nonrecurring items, and the Treasury this year has on the total estimate missed it by eight-tenths of 1 per cent, and on the income taxes the Treasury missed it four-tenths of 1 per cent, or about $8,000,000.

Now, here is the situation: The gentleman from Texas sets himself up as a judge of estimates. I concede his position on that side of the House. The Treasury estimates are for the country as a whole. The Treasury's estimate was in error about $33,000,000. The gentleman from Texas missed it by $200,000,000.

Mr. GARRETT of Tennessee. Mr. Chairman, will the gentleman yield there?

Mr. HAWLEY. Certainly.

Mr. GARRETT of Tennessee. Did I understand the gentleman to state a few moments ago that his refund to the steel company is being paid to-day?

Mr. HAWLEY. Paid to-day. The law provides that when the Treasury has made a report to the joint committee the joint committee will have 30 days from the date of that notice before the Treasury proceeds to payment, and the Treasury officials advised us that if the settlement was not disturbed they would pay at the expiration of the 30 days, which was midnight last night.

Mr. MOORE of Virginia. Mr. Chairman, will the gentleman yield?

Mr. HAWLEY. Yes.

Mr. MOORE of Virginia. Could the joint committee prevent a payment by protesting?

Mr. HAWLEY. The officials of the Treasury Department, Mr. Alvord and Mr. Bond, both Assistant Secretaries, said, not once, but several times, that if the joint committee did not disturb the settlement they would proceed to the payment and assume the responsibility, but if the joint committee saw fit in any way to disturb the settlement—that is, to take decided action indicating its disapproval—then the joint committee would assume the responsibility. If the joint committee protested against that arrangement, the joint committee would assume the responsibility.

Mr. MOORE of Virginia. Do you mean by "protesting" preventing the payment?

Mr. HAWLEY. If the joint committee had disapproved this settlement and decided that it ought not to be made, it would go to court.

Mr. GARRETT of Tennessee. Then it is using funds out of some other prior allotment to pay that?

Mr. HAWLEY. They are using money for refund purposes authorized in the existing law.

Now, there are many other things that I had in mind to say, but I will confine myself to one other matter. It is admitted by the gentleman——

Mr. GARNER of Texas. Mr. Chairman, will the gentleman yield there?

Mr. HAWLEY. Certainly.

Mr. GARNER of Texas. Do I understand that while Congress is not in session, under your instructions the chief examiner, Mr. Parker, passes on these cases and writes a letter and communicates with the Treasury? Is that correct?

Mr. HAWLEY. He carefully investigates every case, large or small. If he finds no cause to question the finding, he so advises the Treasury. If he finds minor matters, he calls them to the attention of the Treasury. If he finds matters he thinks of importance, he so advises the chairman, and through him the joint committee.

Mr. GARNER of Texas. When Congress is not in session, or even if Congress is in session, he acts for the committee under your direction?

Mr. HAWLEY. Under the directions issued by the former chairman. I am printing in my remarks a statement concerning what Mr. Parker and his staff does.

Mr. GARNER of Texas. Then when the committee is not here he acts for the committee?

Mr. HAWLEY. He acts in this way: He examines all the reports that come to the joint committee. If they are regular in form, and no questions occur as to compitations, or no question of the application of the law or the regulations is involved; or if no other question of law or of fact can be raised, he writes to the Treasury Department to the effect that no suggestions are to be made.

Mr. TREADWAY. Mr. Chairman, will the gentleman yield?

Mr. HAWLEY. Yes.

Mr. TREADWAY. Did not Mr. Parker report to you constantly during the summer?

Mr. HAWLEY. Yes. Small cases he did not report, but on major cases he did.

Mr. TREADWAY. You were in touch with Mr. Parker even when Congress was not in session?

Mr. HAWLEY. Yes.

Now, I desire to make a few remarks on the Steel case. The United States Steel Corporation consists of the parent corporation, 13 subsidiaries and 181 subsidiaries of subsidiaries.

When the Government assessed a tax the policy of the Steel Corporation was to pay it promptly in full, and to raise no question at the time. However, there were many questions which it did raise finally, within the legal period, as to the meaning of the regulations, the interpretation of the law, and the application of the law to certain items. All of those questions were raised in due time, but the steel company took this position: That during the war, when it was necessary for the Government to have money, that whatever money the Government said was due from the steel company it should have; and that after the war was over all questions between the two should be settled, when the Government was not in the stress it was then in; that it desired to have no disputes and no lawsuits with the Government over the question of taxation at that

time. As stated, it paid $217,000,000; and it is asking that under the law and regulations adjustments shall now be made, the proper amount due should be decided and refunds made for the overpayment of its taxes. So far as I know, no allegation of fraud or unlawful practice on the part of the corporation has been raised.

This matter came to the joint committee in due order. I called the joint committee together. Mr. Parker, the expert, reported on it. He had examined it; he had gone into it at some length; he had known it was being considered in the Treasury Department and would come down. He found no fault with the computations nor had he any general criticisms to make of the proposition, but he said it involved certain questions with regard to consolidated returns and invested capital that he did not feel warranted in writing the usual letter without bringing it to the attention of the joint committee. He stated to me that so far as his examination was concerned, he found that at least the amount proposed in the bill is due the Steel Corporation. I called the joint committee together for the purpose of considering the matter. I will not restate what has already been stated regarding the hearings. At the conclusion of the hearings I called the joint committee together in executive session.

The joint committee is not required by law to approve or disapprove a claim. Reports on these claims are sent to us for our information. They can also be obtained by the Committee on Ways and Means, the Committee on Finance of the Senate, and by any special committee appointed for that purpose by either House. After the hearing was concluded, the committee then went into a discussion of what action, if any, the joint committee should take.

The CHAIRMAN. The time of the gentleman from Oregon has again expired.

Mr. WOOD. Mr. Chairman, I yield the gentleman five additional minutes.

Mr. HAWLEY. I take the position that a man who has accepted an appointment or an election to an office is obliged to carry out the responsibilities of that office. He is obliged to do that. Now, certain gentlemen have criticized this settlement, but they had a time, Mr. GARNER, of all times, and an opportunity, of all opportunities, in that joint committee, in executive session, to have made a motion to disapprove this settlement. Did they do it? I violate no confidence of the gentleman from Texas or the joint committee when I say he did not make such a motion, because the gentleman from Texas said somewhat enthusiastically the other day that he did neither of these two things.

Mr. SCHAFER. Will the gentleman yield?

Mr. HAWLEY. Just briefly.

Mr. SCHAFER. If the gentlemen of the joint committee who oppose this refund on the floor to-day had made a motion at the committee meeting to disapprove, and the motion was carried, then that check would not have gone out to the Steel Corporation to-day. Is my understanding correct?

Mr. HAWLEY. If a motion to disapprove had been carried by the joint committee I understand they would not have sent it out but would in all probability have sent it to the Supreme Court.

Mr. SCHAFER. Then, in other words, they are raising a big cry to-day after they have opened the door and let the horse out. [Laughter.]

Mr. HAWLEY. Well, if it is a horse. I want to say for myself, as one member of that joint committee, that I feel it is incumbent upon me to assume the responsibility imposed by my acceptance of that office. The joint committee has done excellent work. The consideration of refunds is but one item in this work. I am quite sure anyone will agree to that who has had occasion to see its work, its services with reference to the tax laws, amendments to the revenue act, and various other activities in which it is engaged.

I have expressed in writing that I did not believe the settlement should be disturbed. I want to know if any man who believes it ought to have been disturbed has expressed that in writing. I believe the Government has gotten a better settlement on this matter than it would get under any other procedure and that if it had gone to the courts it would at least have added many millions of dollars in interest to the present settlement, if the courts affirmed the settlement as agreed on. The interest for five years at 6 per cent on $15,000,000 would be $4,500,000. The expense of 25 experts working on that during that period would mean a considerable additional amount. I believe that this administrative settlement, along lines of sound business, was the best settlement.

Now, they speak here about taking responsibility for the acts of others. We in this House vote for appropriations amounting to more than $3,000,000,000 reported by the distinguished Appropriations Committee.

How many of us investigate the facts in such cases? We have delegated to them the business of making the investigations and reporting to us. [Applause.]

The CHAIRMAN. The time of the gentleman from Oregon has expired.

Mr. HAWLEY. Under the permission to extend and revise my remarks I submit a more extended statement of the matters I discussed and to add some additional information.

The gentleman from Texas [Mr. GARNER] has called the attention of the House to refunds of taxes collected in excess of amounts justly due, particularly emphasizing the total amount to be expended for refunds in this fiscal year. As a result an improper stress has been laid upon one side of the picture only, for he has completely failed to give credit to the Treasury Department for the enormous amounts collected in back taxes in recent years—these amounts being far in excess of the amount of taxes refunded.

He points to the estimated sum of $205,000,000 to be refunded this year. But consider the sum of $245,000,000 which the Treasury estimates will be collected in the same period for back taxes. The Government insists that deficiencies in taxes should be paid and has the power to collect them. It should also as promptly as possible return to taxpayers any excess collected from taxpayers and due them under the law.

In the last three fiscal years refunds and back taxes have been in the following amounts:

Fiscal year ending—	Refunds	Back taxes	Excess of back-tax collections over refunds
June 30, 1926	$182, 220, 051	$295, 982, 056	$113, 762, 005
June 30, 1927	117, 412, 172	331, 476, 826	114, 064, 674
June 30, 1928	148, 286, 061	277, 835, 602	129, 549, 541

In addition to these back taxes—a term which is restricted to collections made after the calendar year has closed—the Treasury every year collects substantial deficiencies before the calendar year closes. These amounts should be added to the figures for back-tax collections, to get a true picture of the results of the Treasury's activities in this respect. Exact figures can not be furnished at this time, but it is conservatively estimated that at least $25,000,000 is obtained annually in this way.

That is, during the last three fiscal years, the Treasury has collected $980,294,484 for deficiencies and back taxes, and refunded on $447,918,284, or an excess of $532,000,000 of deficiencies and back taxes collected over refunds paid. Taxes paid voluntarily in accordance with the returns filed, which in these three years reached the staggering total of over $5,400,000,000, are not included in the above figures. The figures relate only to additional taxes which the Government has claimed and actually collected. This comparison is presented that no false notion may get abroad that the operations of the Treasury consist only in making refunds. It is a large, effective organization for the collecting of taxes, and every year collects in deficiencies and back taxes far more than it has been obliged to refund.

Also the large refunds to which the gentleman has called attention are in part due to decisions of the courts. The decision of the Supreme Court in the case of the National Life Insurance Co., recently decided, will require during this year refunds totaling about $35,000,000. If this amount, together with the $26,000,000 paid to the Steel Corporation, be taken from the estimated total of $205,000,000, we only have left $144,000,000, which is less than the refunds for 1926 or 1928. So that there is nothing startling in the total figure for this year, but they indicate that the Bureau of Internal Revenue is earnestly and successfully dealing with the accumulation of hitherto unsettled cases.

And the gentleman from Texas overlooks another very significant fact; namely, that these refunds are made very largely to correct the errors of the Treasury during years prior to 1921, when the Democratic Party was in power, and these tax laws were being administered by them. Under their administration was inaugurated a system of tax procedure which resulted in virtually driving the whole tax problem into the courts for solution—not for final solution, but for decisions in

thousands of individual cases, year after year, leaving the department with its hands tied during a long period of litigation.

What was the result? The staggering total of 22,000 cases in the Board of Tax Appeals in October, 1927, and several thousand cases in the courts. These cases in the Tax Board involved asserted deficiencies totalling about $700,000,000.

Now all that the Treasury Department has been trying to do is to restore the income tax to its proper sphere. It should not be administered by the courts. Its administration should be kept within the confines of the Treasury except in the exceptional cases that really require litigation. It is substituting decent administrative practices for a scandalous system that was bringing the income tax into disrepute. It is not bargaining, or indulging in any improper practice. It is seeking to administer the income tax in the same sensible way that Canada, Great Britain, and other nations have adopted.

Let me give you a concrete example. You, as a taxpayer, find it necessary to value your factory building for depreciation purposes as of March 1, 1913, as the law permits. You fix a value of $150,000. The department's engineers examine the building and say that it was only worth $140,000. A number of years have elapsed since 1913. What is the correct answer? It is a matter on which any 10 real-estate experts might disagree. Suppose the department, to get rid of this as one of these accumulated cases in the Tax Board, concedes a value of $145,000. Is the result unfair, unsound, unwarranted? Is the answer of a court of last resort apt to be any more correct? Such a court may say the value was $140,000, or $160,000, or any other figure. In any event, the conclusion depends on someone's judgment. The department may gain or lose by the litigation. But the litigation is scarcely worth what it costs. It is also expensive to the taxpayer. He is ready to concede something to get the matter settled. Such a settlement is eminently proper, reasonable, and sound.

Or suppose, in the above case, there is another issue involved, namely, whether a promissory note held by the taxpayer has become worthless within the particular taxable year. The taxpayer has been unable to show to the satisfaction of the Treasury that the note became worthless before the year closed, but it is probable that he could obtain testimony that would show this to be the fact. If the Treasury says "We will concede your value of $150,000 for your building if you will concede this other issue and drop your claim for loss on the note," and the taxpayer willingly assents to get the matter settled, is there anything unreasonable or unsound in using such methods as these to get this accumulation of 22,000 cases out of the way? One item is offset against another. Remember that by these methods the Treasury can make available in the next two or three years large amounts of back taxes which will affect the Government's financial position very favorably, save very considerable sums in interest, and that these amounts will play an important part in determining what the tax rates in the next few years are to be.

In all these criticisms the gentleman from Texas would seem to be on as unsound ground as he was when a year ago he predicted that the tax collections would justify a tax reduction of four hundred millions, a figure that subsequent events have shown to be fantastically high.

Remember that every refund or credit of $75,000 or over is reported to the Joint Congressional Committee on Taxation, and is scrutinized by the expert staff of that committee before a cent is paid out on these claims.

These refund problems are a necessary result of the governmental policy of collecting taxes before litigation. Almost every Government, State and National, has such a policy. Particularly during the war years, when revenue was vitally necessary, we could not stop to wait for court decisions. We had to collect first and let the taxpayer pursue his legal remedies afterwards. Since the 1924 revenue act, we give him the right to a decision of the Board of Tax Appeals before an additional tax can be collected. Now, it is imperative that we dispose of the accumulation of old cases of prior years, making refunds whenever due, collecting deficiencies whenever due, the large problem being to dispose of these old cases forever and not have them dragging their weary and costly way for another five or six years from one court to another.

A failure to pass this supplemental appropriation for refunds for this fiscal year would mean just one thing: That interest would be running against the Government at 6 per cent on this sum of $75,000,000—for we must assume that it is really needed—and would continue to run until Congress at a later date appropriates the money. That would mean $4,500,000 interest annually, or over $12,000 a day, expended needlessly but inevitably. And it will not be just a few large corporations that are deprived of the use of this money. Probably 50,000 taxpayers, large and small, mostly small, would be told by the Treasury that they were entitled to a refund but there was no money available.

Moreover, the refund to the United States Steel Corporation, of which Mr. GARNER spoke, will not be paid out of this supplemental appropriation. Under the agreement of settlement the time limit of 30 days expired on January 4, 1929, at midnight.

ESTIMATES OF RECEIPTS AND DISBURSEMENTS—SURPLUSES

The Federal income tax as we now have it largely arose out of the necessities of the World War. In the case of corporations the invested-capital plan was adopted, under which a certain percentage of tax-free income was allowed before determining the net income subject to taxation. Income, excess-profit taxes, or war taxes were imposed. The rates of taxation were very high and the taxable incomes returned were very large for the years 1917, 1918, 1919, and 1920. The determination of invested capital has proved extremely difficult and has necessitated the employment of engineers of various branches of the engineering business, accountants, lawyers, and other experts. The questions arising out of the problems of invested capital, complicated by consolidated returns, have materially delayed the final adjustment of taxes due for these years. It has been found that, in some instances, an excess of taxes was collected and refunds must be made. In other instances there is a deficiency in the tax and the taxpayer is called upon to make further payments.

The amount of back taxes estimated to be collected in any fiscal year, minus the amount of refunds estimated for that year, has been considered as an item of income for such year and included in the estimates as income. This constitutes an irregular, nonrecurrent item which will in the course of time be reduced to a comparatively small amount. Other nonrecurrent sources of receipts have also existed, such as the sale of surplus war material, sale of railroad securities, sale of Federal farm-loan bonds, and other items. The total amount received from these nonrecurrent sources has been in past years a very material item in the Treasury receipts but is gradually becoming of less importance. These items have complicated the estimates of receipts in past years, as it was not possible to forecast with certainty what settlements of income taxes might be made, deficiencies collected, refunds paid, and what sales of securities or property acquired during the war might be effected. But with the growing elimination of these nonrecurrent items the Treasury has been able to estimate with much certainty the receipts from the sources under its control. There seems to be an opinion in the country that the Treasury Department is primarily responsible for estimates of expenditures, but under the Budget system, as now established, estimates of expenditures are prepared by the Director of the Budget, to whom all the departments and bureaus of the Government report. The Treasury Department prepares the estimates on internal revenue, customs receipts, and miscellaneous receipts. It is true that during the years following the war actual receipts from these sources differed very substantially from the estimates. This was due to the unusual conditions which made it extraordinarily difficult to estimate with great accuracy. For example, extensive changes were made in the revenue laws in 1921, 1924, and 1926, and there were rapid and sweeping changes in business conditions, and miscellaneous receipts were particularly difficult to estimate, owing to the large amount of capital assets held by the Government which were being disposed of but as to which it was impossible to foresee the actual time of disposition. Moreover, the Bureau of Internal Revenue was concentrating on the disposition of the accumulation of tax cases resulting from the war years, which made the back-tax item more uncertain than ever, and even under normal circumstances it is almost impossible to estimate in advance what back-tax collections will amount to, depending as they do on the development of facts which can not be foreseen and on court decisions the effect of which can not be anticipated.

With the passing of the unusual conditions which have existed there is every reason to believe that the Treasury estimates of revenue will become more and more accurate and thus deprive the gentleman from Texas of one of his favorite political targets. For instance, for the fiscal year 1928, the Treasury revenue estimates were remarkably accurate. Total ordinary receipts were estimated at $4,075,600,000, whereas actual receipts amounted to $4,042,300,000, a discrepancy of only $33,000,000, which is extremely small when compared with the total figure and amounts to only eight-tenths of 1 per cent. Income-tax receipts varied from estimates by only four-tenths of 1 per cent. This seems remarkably accurate, especially when consideration is given to the uncertain character of several factors and that the whole structure is based upon the progress of business in the country.

There is every reason to believe that the Treasury estimates for the fiscal year 1929 will prove to be as accurate as they were for the fiscal year 1928.

It seems also that the fiscal year ending June 30, 1929, will close with a surplus in the Treasury.

WHOSE ESTIMATE SHALL WE FOLLOW?

But in the matter of estimates of surpluses, whom shall we follow? Mr. GARNER? I fear to do this. This year when we were preparing the revenue act of 1928 he was quite of the opinion that taxes should be reduced some $400,000,000, as I recall, or some $175,000,000 more than was done. He now laments a possible deficit as a "disgrace to the country." His proposal would have made this certain.

THE PREPARATION OF THE BUDGET

The estimates of receipts and disbursements submitted to the President to be transmitted with the Budget letter are not prepared in the Treasury Department, but are compiled in the Bureau of the Budget. The Treasury therefore is not responsible for the Budget statement nor for the figures which appear in the annual message. While the Bureau of the Budget is nominally "in the Treasury" that does not mean that it is under the direction of the Secretary, but, in practice, means only that the offices of the Bureau of the Budget are in the Treasury Building. The Bureau of the Budget reports directly to the President. On the proposed expenditures by the various departments and offices of government the Treasury reports to the Budget Bureau as any other department reports.

The table of receipts and expenditures printed on pages 18 and 19 of the Report of the Secretary of the Treasury, is not prepared in the Treasury, but by the Bureau of the Budget, and transmitted to the Treasury for inclusion in the Secretary's report. The estimates in the table are on the basis of the information received from the several departments and independent offices by the Bureau of the Budget at the time the Budget letter is prepared for printing.

Surplus revenues accruing in any year have been used to reduce the public debt, and any diminution of the debt lessens, for all subsequent years, the interest charges which must be paid out of the receipts from taxation. Between June 30, 1921, and June 30, 1928, surpluses aggregating $2,791,737,355 have been applied on the debt, making an annual decrease in the interest charge of from $115,000,000 to $120,000,000, and a total of several hundred millions for this period of eight years.

I give below information from the Treasury under date of January 4, 1929, showing details of debt and interest reductions.

THE UNDERSECRETARY OF THE TREASURY,
Washington, January 4, 1929.

Hon. W. C. HAWLEY,
Chairman Committee on Ways and Means,
House of Representatives, Washington, D. C.

DEAR MR. HAWLEY: I acknowledge your letter of January 2, 1929, requesting certain statistics on the public debt of the United States.

The gross public debt of the United States on February 28, 1921, according to the statement of the public debt issued for that date, amounted to $24,049,527,788.58. This is the date nearest to March 4, 1921, for which an official statement was issued showing the status of the public debt.

There is transmitted herewith a statement showing, on the basis of the daily Treasury statements, the public-debt retirements from specified sources for each fiscal year from 1920 to 1928, among which you will find the retirements from surplus.

You request to be advised as to what the annual interest charge on the public debt was for June 30, 1921, and how much such charge has been reduced since that date. While the average annual interest charge on an accrued basis has been computed as shown in Table 52 (pages 541–543) of the Secretary's Annual Report for the fiscal year 1928, it is the Treasury's view that interest payments actually made in cash during a given fiscal year as stated in published reports are the best information for this purpose. The total payments made in the fiscal year 1921 amounted to $999,144,731, and in the fiscal year 1928 amounted to $731,764,476. This shows a total annual reduction in interest payments of $267,380,255. This saving is the result of debt retirements from the sinking fund, foreign repayments, reductions in the general fund balance, and other miscellaneous sources, and of refunding part of the debt into issues bearing lower rates of interest. The average rate of interest on the public debt has been reduced from 4.292 per cent in 1921 to 3.901 per cent in 1928.

You also request to be advised as to how much of this reduction in the interest charge is due to the application of the surpluses. It is not possible to accurately compute this amount, as the surplus of receipts is generally automatically applied throughout the year to debt reduction and there is no necessity for keeping complete accounts of retirements from this source by particular issues. An estimate, however, has been made from the best available information, which indicates that subsequent annual savings in interest charges on account of the application of the surpluses available between June 30, 1921, and June 30, 1928, aggregating $2,791,737,355, will amount to between $115,000,000 and $120,000,000.

I trust this gives you the information you desire.

Sincerely yours,

OGDEN L. MILLS,
Undersecretary of the Treasury.

Statement showing on basis of daily Treasury statements public debt retirements from specific sources for each fiscal year from 1920 to 1928
(War debt reached its peak of $26,596,701,648.01 in the fiscal year 1920, on August 31, 1919)

June 30—	Public debt retirements chargeable against ordinary receipts							Surplus of receipts	Decrease in general fund balance	Total debt reduction	Total gross debt
	Sinking fund	Foreign repayments	Bonds received under the debt settlements	Received for estate taxes in bonds/notes	Franchise tax receipts	Miscellaneous: Gifts, forfeitures, etc.	Total				
1919											$25,484,506,160
1920		$72,669,900		$3,141,050	$2,922,450	$12,950	$78,746,350	$212,475,198	$893,963,145	$1,185,184,693	24,299,321,467
1921	$261,100,250	73,939,300		26,348,950	60,724,500	168,500 4,842,066	422,281,500 4,842,066	86,723,772	[1] 191,976,423	321,870,915	23,977,450,552
1922	276,046,000	64,837,900		21,084,850	60,333,000	392,850	422,694,600	313,801,651	277,572,593	1,014,068,844	22,963,381,708
1923	284,018,800	32,140,000	68,752,950	6,568,550	10,815,300	554,891	402,850,491	309,657,460	[1] 98,833,608	613,674,343	22,349,707,365
1924	295,987,350	38,509,150	110,878,450	8,897,050	3,634,550	93,200	457,999,750	505,366,986	135,527,640	1,098,894,376	21,250,812,989
1925	306,308,400	386,100	158,793,500	47,550	794,160	208,404	466,538,114	250,505,238	17,575,749	734,619,101	20,516,193,888
1926	317,091,750	4,393,500	165,260,000		567,901	62,900	487,376,051	377,767,817	7,833,705	872,977,573	19,643,216,315
1927	333,528,400	19,254,500	159,961,800		1,231,835	5,578,310	519,554,845	635,809,922	[1] 24,055,384	1,131,309,383	18,511,906,932
1928	354,741,300	19,068,000	162,736,050	1,500	618,367	3,089,803	540,255,020	398,828,281	[1] 31,469,570	907,613,731	17,604,293,201
	2,428,822,250	325,198,350	826,382,750	66,089,500	141,642,063	15,003,874	3,803,138,787	3,090,936,325	986,137,847	7,880,212,959	

[1] Increase in net balance in general fund operates as an increase in total gross debt.

Retirements from—			
Charges against ordinary receipts	$3,803,138,787	Total gross debt June 30, 1919	$25,484,506,160
Surplus of receipts	3,090,936,315	Total gross debt June 30, 1928	17,604,293,201
Reduction in general fund balance	986,137,847		7,880,212,959
	7,880,212,959		

NOTE.—The above detailed figures of retirements chargeable against ordinary receipts for the fiscal year 1921 include $4,842,066.45 written off the debt Dec. 31, 1920, on account of fractional currency estimated to have been irrevocably lost or destroyed in circulation.

DEFICIENCIES AND REFUNDS—METHODS OF SETTLEMENT

The collection of taxes is primarily an administrative matter. When questions involving interpretation of the law are raised, or questions of law and fact, or when for any reason the taxpayer feels himself aggrieved, or the Government finds the taxpayer making claims that seem to it unwarranted by the law, these may be taken to the courts. Court proceedings are slow and expensive for various reasons. In order to expedite the settlement of tax cases Congress created the Board of Tax Appeals, to which any taxpayer might appeal before paying a deficiency assessed against him. Decisions of this board and of the Court of Claims, as well as those of other courts, afford precedents for use in subsequent cases. Modern business with its varied and complex conditions is constantly presenting new income-tax problems, which cases theretofore decided by the courts affect but little. I believe it is to the interest both of the

Government and the taxpayer that administrative settlement of tax matters should be the general rule, and this is the policy of the Treasury at this time. In general, the great body of business men in the country are found in actual experience to prefer this method of administrative settlement, as the early disposition of their tax matters affords a very necessary element of certainty in their affairs. A very large proportion of tax returns present simple problems, but there are a great number of returns which involve questions that are by no means easy of determination. What amounts should be allowed in any year arising out of depreciation, depletion, obsolescence, inventories, and so forth, are matters of judgment, to be decided after thorough and careful investigation and the consideration of all the facts in the case.

When cases are referred to the courts it not infrequently happens that before final decision is rendered the taxpayer has gone into bankruptcy, and little or nothing can be collected. The decisions of courts in various jurisdictions are not uniform and are at times contradictory. Some 22,000 cases, involving over $700,000,000, have been referred to the Board of Tax Appeals, which would take the board at least five years to dispose of, not taking into account new cases that may be added. The Board of Tax Appeals is a diligent body and has reduced the above number.

The Board of Tax Appeals, since its organization in July, 1924, received up to June 30, 1927, 28,311 cases, and, during this 3-year period, disposed of 8,893, or 31.52 per cent. There were pending on June 30, 1927, 19,318 cases. On February 29, 1928, the number of cases pending had increased to 21,381, an increase of 2,063 in a period of eight months. During the same 8-months' period the amount of deficiencies involved in pending cases had increased from $517,804,480 to $885,526,232. Delays in the settlement of tax cases should be reduced to the minimum.

In July, 1927, what is known as the Special Advisory Committee was created, consisting of 12 of the best and most experienced men, to administratively consider and settle the more difficult cases. As I understand, the Board of Tax Appeals has been relieved by this committee of a number of cases. During its first year the Special Advisory Committee considered 8,549 cases and disposed of 5,391 by the administrative method. As stated above, the committee has relieved the board of many cases, and has eliminated by settlement several thousand other cases that would have been appealed. Congress has, for some years, been urging the disposition of the accumulated cases, and the Treasury is making a diligent and effective effort to do this. Early settlement eliminates the expenses of litigation, for every day that a case is pending before the courts there is a continued expense. The purpose of the bureau is to give the taxpayer as fair treatment as could be accorded in the court, and at the same time protect the interest of the Government, and, while proper forms of procedure are observed, there is less formality than occurs in the court. The early way out of this wilderness of accumulating cases does not run through the courts.

In a great percentage of income-tax cases, particularly those involving excess-profit and war-profit taxes, and in which invested capital is a factor, it is not possible to determine the tax with strict mathematical accuracy. In these returns there are invariably present items concerning the application of which there is disagreement between the taxpayer and the bureau, such as inventories, depreciation, depletion, obsolescence, and many others which affect the amount of tax to be paid, the deficiency to be collected, or the refund to be made. The determination of such questions rests upon judgment rather than mathematical calculation.

The whole trend in administration in the Bureau of Internal Revenue is to diligently audit revenue returns and close cases, dealing with taxpayers in a courteous and sympathetic manner. With the vast majority of taxpayers the administration of the income tax is growing in approval.

The Treasury has not to my memory indicated any desire to see the income tax abandoned, but, on the contrary, has adopted the administrative method of settlement under the operations of which taxpayers are indicating an increasing satisfaction.

The most certain way to make the revenue tax unacceptable in the country would be for the Government to become litigious and file a multiplicity of suits. It is the purpose to avoid this in all proper cases. Suits involving questions of the interpretation of law, or for the decision of questions of mixed law and fact, or where a taxpayer feels aggrieved and exercises his right to enter a court, or the Treasury believes the interests of the Government can not otherwise be protected will continually occur. But unnecessary suits should be avoided.

And, in passing, let me say that the Secretary of the Treasury does not administer the revenue tax, audit returns, assess deficiencies, or determine refunds. These are committed to the officials who are designated under the law for this service and who work out their problems according to their own program. Deficiencies or refunds as agreed upon are not submitted to the Secretary for his approval; nor does he hasten or delay the adjustment of individual tax cases, as was inferred by Mr. GARNER.

As I understand, the Secretary of the Treasury does not prescribe to the Bureau of Internal Revenue the order in which returns shall be considered which involve the collection of deficiencies or the payment of refunds. The bureau proceeds with its work as rapidly as consistent with accuracy and due consideration. When agreements have been reached with taxpayers upon deficiencies or refunds the deficiencies are collected and the refunds prepared for payment. There is no policy existing in the bureau or in the Treasury under which the decision on cases will be so arranged as to occur at moments that may be said to be politically fortunate. During the consideration of a return in which there are disputed items it can not be forecast with certainty when a conclusion will be agreed upon. There is no reason for holding back the decision on a refund or on a deficiency, and a Committee on Ways and Means has for several years urged the bureau to bring its work current. In accordance with this, as well as with its own desire, cases have been brought to settlement as rapidly as possible.

I have on several occasions differed with the Treasury on tax policies, but as an institution, after many years of experience, and especially during recent years, I have regarded the Treasury proceedings as those which should be pursued by any sound business concern. Any febrile attempt to bring the administration of the present great Secretary of the Treasury into discredit has not been and will not be received by the country as warranted.

UNITED STATES STEEL CORPORATION REFUND

The recent remarks concerning Treasury operations, especially regarding those of the Bureau of Internal Revenue, occurring on the floor of this House, primarily arose out of the settlement with the United States Steel Corporation for taxes for the year 1917. The United States Steel Corporation as a parent concern, is not a manufacturing concern but a holding company. The general organization consisted in 1917 of a total of 195 corporations comprising a parent company, 13 subsidiaries of the parent, and 181 subsidiaries of subsidiaries. With its return of 1917 it paid in round numbers $200,000,000 of tax. Subsequently, upon demands from the Treasury, it paid over $17,000,000 additional tax. The policy of the company was to pay taxes as soon as assessed, and within the legal period to file application for refunds whenever it thought refunds were due. This policy has given the Government the use of the money made in the additional payments for the period of from seven to nine years. Practically all the difficult problems connected with income taxation are involved in this case, including depreciation, depletion, obsolescence, inventories, and so forth, requiring the examination and report of engineers, accountants, lawyers, and other experts. Within the legal period, and in order to preserve its rights, the corporation filed during the past summer a suit in the Court of Claims, in the amount of $101,000,000 principal sum and $60,000,000 interest, or a total of $161,000,000. This suit included, of course, practically every item that has been in dispute during the consideration of this case. Recently, the Bureau of Internal Revenue arrived at a settlement with the company for refunds for 1917, of nearly $16,00,000, with interest of approximately $11,000,000, making a total of a little less than $27,000,000. Involved in this agreement is a final settlement of the taxes of the corporation for the year 1917, and a dismissal of the pending suit in the Court of Claims. In accordance with the law, which requires all settlements for refunds in excess of $75,000 to be reported to the Joint Committee on Internal Revenue Taxation, the bureau so reported on December 17. The case was carefully examined by the division of investigation.

As chairman of the joint committee, I called a meeting at which officials of the Treasury appeared and made a statement to the joint committee of the facts in the case and the considerations that led to the conclusion of this agreement.

Under the revenue act, returns are subject to publicity only to a limited extent, and certain facts regarding returns are not to be made public by any person, no matter what office such person may hold. The law provides that the Committee on Ways and Means of the House, the Committee on Finance of the Senate, and the Joint Committee on Internal Revenue Taxation, can ask the Treasury for certain information for their guidance, but this provision does not set aside that provision of the law which inhibits the publicity of returns. When the joint committee met, the question was raised whether the hear-

ing should be stenographically reported. The Treasury officials were asked if they could speak as freely to the joint committee if the proceedings were to be stenographically reported as they could under the law if no reporter were present, and the officials stated that they would necessarily be restricted in their statements were a reporter present. The committee therefore decided not to have the proceedings stenographically reported, in the interest of the fuller information. The joint committee is not required to approve a refund or to disapprove a refund. Under the law these reports are submitted for the information of the joint committee. However, if the joint committee should seriously object to any settlement involving refunds, doubtless such objections would be given the serious consideration of the Treasury. In fact, the officials stated that if the joint committee entered no objection they would proceed with the settlemen, and when the time arrived, on January 4, for payment, would pay the refund and the Treasury would assume the responsibility for the settlement; but if the joint committee opposed the settlement, and suggested that it should be taken to the court, the responsibility for the outcome must be assumed by the joint committee. At the conclusion of the hearing which lasted some four hours, the joint committee met in executive session. As one of the members, I believe the settlement is favorable to the Government, that it should not be disturbed, and that legal proceedings should be instituted. Litigation would require the attention of a large number of the experts for a period of five years, in all probability, and the payment of a large sum in additional interest, before a final decision by the Supreme Court could be obtained. Mr. GARNER is a member of the joint committee.

I violate no confidence of that committee in stating that he made no motion or made no proposal to disturb the settlement, for he has already made that statement on this floor. I have always held the opinion that a person elected or appointed to office is under obligations to fulfill the duties of the office he has accepted. I submit that if Mr. GARNER were opposed to this settlement he had the opportunity of all opportunities in the joint committee to have made a motion to that effect; but since he did not, by his own act he has tacitly declined to disturb the settlement, leaving the responsibility for such settlement with the Treasury. His speech on the floor of the House may or may not indicate such dissent.

The settlement with the United States Steel Corporation for the years 1918 and 1919 awaits the disposition of that pending for 1917, and in the settlement to be effected for these years the $28,000,000 of credit transferred from 1917 will be taken into the account. If the proposed settlement were to be rejected and the matter litigated, no one can forecast the final outcome; but, in the meantime, interest must be paid by the Government for a period of many years on all refunds ordered by the Supreme Court.

At the hearing it was several times clearly stated by the Treasury officials that the proposed refund would be paid at the end of the statutory period of 30 days; that is, January 4, 1929, if the joint committee did not take unfavorable action. I earnestly suggest that Mr. GARNER neglected his opportunity if he holds the opinion that the proposed settlement should be rejected and the matter submitted to the courts. I have been proceeding on the supposition that this was the discussion of a financial matter in which opportunity was afforded to correct what a member of the joint committee thought was an objectionable action, or at least to express disapprobation in an official way. However, if this is considered as an opening for partisan advantage, that is another story.

The Joint Committee on Internal Revenue Taxation was organized by the election of Hon. William R. Green, then chairman of the Committee on Ways and Means, as chairman. Judge Green was authorized to employ a staff of experts and stenographers. With the experts he worked out plans of work which were approved by the joint committee and which have not yet been fully carried out. When I became chairman, after inquiry, I found it not advisable to disturb or set aside investigations in progress, but have suggested some additional inquiries. There is much valuable work yet to be done by the joint committee and its staff in working out the problems involved in income tax legislation. At my request, Mr. L. H. Parker, Chief of the Bureau of Investigation, prepared a brief statement of the plans and work of the joint committee:

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,
Washington, December 28, 1928.

Hon. WILLIS C. HAWLEY,
Chairman Joint Committee on Internal Revenue Taxation,
Washington, D. C.

MY DEAR CHAIRMAN: In accordance with your verbal request of yesterday, I am outlining briefly the procedure followed by this office in connection with the refunds and credits which have been or are being reported to the Joint Committee on Internal Revenue Taxation under the provisions of H. R. 16462, the urgent deficiency bill of February 28, 1927, and under the provisions of section 710 of the revenue act of 1928. The procedure followed was approved by Hon. William R. Green, former chairman of this committee.

Both the urgent deficiency bill and the revenue act of 1928 required that refunds and credits in excess of $75,000 should be reported to the committee by the Commissioner of Internal Revenue, together with a copy of his decision in each case. No power to approve or disapprove these credits or refunds was vested in the committee. It was recognized, however, that while the committee had no definite responsibility in the matter of the refunds and credits, that nevertheless Congress had a purpose in enacting this legislation and that there was laid on the committee an obligation to carry out such purpose or purposes.

The purposes which it seemed probable that the Congress had in mind were the subject of conferences between the former chairman, Judge Green, and the writer. It was concluded that the intent of Congress could be analyzed substantially as follows:

First. It appeared to be the purpose that the joint committee should be informed as to the principal reasons for the crediting and refunding of taxes, and that the Congress should also be informed of such reasons if it was thought desirable.

Second. It appeared to be the purpose that the joint committee should be furnished currently with the decision of the commissioner on these important cases, thus allowing it to study the effect of our system of internal-revenue taxation in the concrete instead of studying the effect of this system mainly in the abstract.

Third. It appeared to be the purpose that the committee itself, or its authorized agents, should call to the attention of the Bureau of Internal Revenue or the Treasury Department any final tax determinations resulting in refunds or credits which might seem erroneous, or doubtful, or worthy of further study and investigation. It was understood, that as the committee had no power to approve or disapprove of these matters, that the duty of the committee and its staff was discharged with the making of the above comments, and that the department could act on same as it saw fit.

Judge Green instructed the writer to take charge of the reports made by the commissioner in regard to refunds and credits and to handle same in general conformity with the three purposes named above. It was realized that a complete audit of these cases could not be made, and it was therefore left to the discretion of the writer as to what cases would be especially investigated from the complete files of the Bureau of Internal Revenue. The reports made to the committee and the decisions of the commissioner have in all cases been carefully examined. Cases which have seemed doubtful after such examination have been thoroughly investigated on the doubtful points from the bureau files. Your instructions to the writer upon taking up the chairmanship of the committee were to follow the same procedure as instituted and approved by Judge Green.

In carrying out the above instructions the writer has had also two practical considerations in mind—first, to cause as little interference with the work of the bureau as possible and, second, to cause no interest loss to the Government on account of delays.

Mr. Chesteen, assistant chief of this division and a former auditor of the consolidated returns division of the bureau, has immediate charge of all special investigations requiring an examination of the bureau files. He has been furnished, through the kindness of the commissioner, an office in the National Press Building, where the audit division of the bureau is located. Thus files can be examined by him or his assistant without leaving the building. This prevents many disadvantages which would occur if the files left the custody of the bureau for examination at the Capitol.

A few words seem proper as to the results of the above procedure. In carrying out what appeared to be the first purpose of the Congress in regard to ascertaining the principal reasons for the refunds and credits a complete report on refunds, credits, and abatements was made and furnished each member of the joint committee in January, 1928 (report dated December 8, 1927). This report fully outlines and classifies the principal reasons for such overassessments of tax and also contains a description of certain important individual cases and the comments made thereon to the bureau by this office. A duplicate copy of this report is attached. The joint committee took the matter of submitting this report to the Congress under advisement, and action thereon has not been taken. A similar report is now in process of preparation and will be ready for submittal to the joint committee in January, 1929.

The second purpose which seemed to be in the mind of the Congress was in regard to furnishing a basis for the study of our system of internal-revenue taxation in the concrete in order that defects could be found and means of simplification arrived at. The writer believes that the study of these refunds has brought out matters which have had an important bearing on the following reports already made:

1. Depreciation.
2. Capital gains and losses.
3. Consolidated returns.

4. Interest.

5. Federal taxation of life-insurance companies. The necessity for reports on other subjects has also been seen from this study, among which may be mentioned:

6. Credit of foreign taxes.

7. Depletion.

8. Defects which allow of legal tax avoidance.

9. Valuation methods.

The third purpose of the Congress appeared to be that there should be opportunity for comments to be made to the Treasury Department or the Bureau of Internal Revenue by the joint committee or its agents in regard to specific cases. It is the opinion of the writer that in the main the comments of this division have been helpful to the bureau instead of the reverse, as they have called to the attention of the higher officials certain doubtful issues, and, in at least one instance, seem to have corrected an inconsistent practice. The actual cases where the comments of this division have resulted in reducing the refunds proposed have only been two in number and the amounts saved comparatively small in comparison with the enormous amount of refunds made. Nevertheless the corrections made have been in an amount more than sufficient to pay the expenses of this division since its organization.

The writer would be glad to be advised if the above sufficiently describes our procedure in connection with refunds and credits, and, also, if you desire to make any modifications or changes in our present practice.

Very respectfully,

L. H. PARKER.

Mr. WOOD. Mr. Chairman, I yield 15 minutes to the gentleman from Massachusetts [Mr. TREADWAY].

Mr. TREADWAY. Mr. Chairman, I feel the time that has been allotted to me could have been used to very much better advantage in the hands of our distinguished chairman. I can only paint the picture perhaps in a little different language from that which he has already so ably used.

In the first place, I want to go a little more completely into what has brought this matter to the attention of the House at this time. It would appear that the question of refunds in taxation is almost a new subject here. Of course, it has been going on indefinitely since the income tax law was first set up and will continue to go on. The total refunds since 1917 have amounted to $975,012,356.33. This is not a new situation at all, but it so happens that under the regulation which requires all reports of claims exceeding $75,000 to be made to the joint committee for its consideration—not approval or disapproval—attention has been concentrated on this hearing at the present time through the gentleman from Texas and I first want to make a reference to that matter.

The chairman has referred to the meeting of the joint committee held on December 17, at which appearance was made by the Treasury Department. There was present a stenographer, and the first question that came up was whether or not we needed his services. The statement was made that it might be embarrassing at a later period in court if this matter was considered in open session, a report of it made stenographically, and then made a public record. It was therefore agreed by the joint committee that we were in executive session and the stenographer was excused.

I do not ever wish to criticize my colleagues, but I do think the House is entitled to a realization of the fact that within 48 hours from that time the distinguished gentleman from Texas took it upon himself to make an hour's speech on the floor delivering to the general public the details of what had happened in the executive session of the joint committee. It does not seem to me that this was either ethical, proper, or under the general parliamentary procedure of the House.

I was very much surprised that he, of all men, knowing how careful he has been in sessions of the Ways and Means Committee to wonder where leaks to the press came from, that he himself should have taken it upon himself to bring the matter in the form of a speech before the House; but there was no deception on his part as to where the leaks came from in this case. The leak was very apparent and the gentleman from Texas was the party that leaked. [Laughter.]

Now, the gentleman from Mississippi [Mr. COLLIER], another colleague of ours on the joint committee, has taken exception to what he calls a trade-and-barter system of settling these very intricate cases.

It has been referred to several times that this case, the so-called United States Steel Corporation case, is so intricate, so complicated, and so voluminous that it required 2,400 pages of closely typewritten material to even make a report on it. Still the gentleman from Mississippi says that the method of settlement was a hodgepodge. Why, according to the testimony before the Committee on Appropriations of the Undersecretary, Mr. Bond, three of the ablest men in the department had worked for years on this matter.

Mr. COLLIER. Will the gentleman yield?

Mr. TREADWAY. Yes.

Mr. COLLIER. I quoted the language of Secretary Bond himself where he said, "After offsetting and conceding." If that is not a different name for bartering and trading, I do not know what would be. He used perhaps finer language.

Mr. TREADWAY. In order that the matter may properly be before the Members of the House, let me say that I am somewhat of a Yankee trader. I have never had occasion to trade individually in these millions, of course, but the gentleman knows that we have information that the United States Steel Corporation from the very beginning of the income tax law had paid every claim ever made by the Government in the form of taxation, never had questioned or quibbled, and therefore they naturally brought in a protest when the time came. They did pay the tax, and under the best of audits, if this bill had not been paid at midnight last night, as our chairman has told you, the suit in the Court of Claims would have followed on the part of the United States Steel Corporation representing over $100,000,000 of claims against the United States and in addition to the $100,000,000 there would have been a further claim of $60,000,000 for interest. Now, which is better, to allow all the experts available in the Government to make up this tax bill and say what is a fair compromise and have the United States Steel Corporation agree to that compromise of $15,000,000 with $11,000,000 of interest added, making a total of $26,000,000, or go to court over a long period of years with a greatly involved case, and then be called upon possibly to pay $160,000,000. If this is trade and barter, I am for it.

Inquiry has been made as to whether this transaction would close up all pending tax refunds to the United States Steel Corporation. In reply I would say that the tax for the year 1917 is the only one involved in this settlement. The company paid $216,849,230.56, and, as above stated, filed suit in the Court of Claims for the refund of $101,000,000. This suit is cleaned up and settled by the payment by the Government of the $15,000,000, with interest.

Now, in addition to this, we of the Ways and Means Committee and of the joint committee have insisted continually, Clean up these back cases and get current! No man has used the language of bringing the cases up current more than my good friend GARNER, from Texas, who is always urging the Treasury Department to get current, and here was a case where we could make great headway, and when the Treasury Department offers this opportunity he is not willing to help get current.

Our Democratic friends are always criticizing the overhangs of back cases. We have set up different forms and methods endeavoring to get current. First, the Board of Tax Appeals, which has not been able to make any great headway, because claims are coming in faster than settlements can be made by the board.

Then the Undersecretary of the Treasury, Mr. Mills, whom so many of you remember as one of the great tax experts here, appeared before our joint committee and advised an informal advisory committee to do the very thing that now the gentleman from Mississippi [Mr. COLLIER] objects to being done, namely to try to make these settlements without the long, tedious process of law. They have been fairly successful; the number of cases has been materially reduced. Mr. Bond says that there are 12,740 pending, and yet the gentleman objects to the efforts to expedite the work.

Then the gentleman from Tennessee [Mr. BYRNS] argues that because our special joint committee had not approved of the settlement of this Steel case the committee must be held to have disapproved of it. That is practically what he said. On the other hand, the law does not give the special joint committee the power or responsibility.

If the joint committee should have passed a vote not approving this settlement, it is probable that the officials of the Treasury would have inferred that the committee thereby assumed the responsibility of having the department proceed to defend itself in the court action which had already been filed by the Steel Corporation. Failing such action, however, the committee thereby indicated its attitude that the matter was one under the jurisdiction of the Treasury itself and for which the Treasury should be required to assume all responsibility.

There has been no dereliction on the part of the joint committee, and the insinuation that one man passes on all these things is not fair to the joint committee, of which the gentleman from Texas [Mr. GARNER] himself is a member. It is not fair in this way, that as the chairman has said he is continually in touch with our experts whether Congress is in session or not.

Mr. MOORE of Virginia. Will the gentleman yield?

Mr. TREADWAY. Yes.

Mr. MOORE of Virginia. Was this settlement conditioned on the payment being made on January 4?

Mr. TREADWAY. The chairman has explained that.

Mr. MOORE of Virginia. Was that attached as a condition to the settlement?

Mr. TREADWAY. No; I will ask the chairman to explain it in my time.

Mr. HAWLEY. The settlement was made to take effect on that day, but I do not remember that there was any statement made that if the settlement was objected to by the joint committee the settlement would not be made.

Mr. MOORE of Virginia. It seems to me extraordinary if it was not that the Treasury should have proceeded when they knew that the proceeding was pending in an acute form.

Mr. HAWLEY. I am not able to answer more definitely than that. My impression is that the settlement was made to take effect January 4, and if it did not take effect of course that would upset it.

WHAT HAS BEEN DONE BY JOINT COMMITTEE

Mr. TREADWAY. The inquiry of the gentleman from Virginia is pertinent and important. I shall be glad to answer him in detail in revising my remarks.

The principal reason for the prompt release of check to the United States Steel Corporation was to save interest on the total amount of the refund. Another reason was that plans had been made to meet this payment, and the Government, having the money on hand, under its financing plan would gain nothing by holding it. On the other hand, if the refund were not paid within the time limit the Government would be required to pay interest on the amount of the refund at the rate of 6 per cent per annum, which in this case would be about $2,465 a day. The time during which the Treasury Department was required by law to withhold payment of this refund expired at midnight on January 4, being the expiration of the 30-day period specified in the revenue act of 1928. It is probable that if the Treasury had not paid this refund promptly there would now be criticism of the amount of interest which would be accumulating each day.

Now, I want to refer to the work of the joint committee in the various cases referred to it. Here is a brief summary of what has been before the joint committee. The chief examiner of the joint committee, Mr. Parker, makes the following statement of the cases that have been referred to the committee:

Taken as a whole the overassessments submitted by the commissioner to the joint committee show careful, legal, and just handling in the face of many difficult problems.

The review of the overassessments is instructive as to the operation and effect of our revenue acts and as to certain inequitable results permitted under such acts.

Two hundred and ninety-six cases, or 92 per cent, have been clearly proper and allowable on the basis of the facts shown in the report of the commissioner to the joint committee.

Twenty-seven cases, or 8 per cent, have been doubtful on the report of the commissioner and have been specially investigated through the files from the Bureau of Internal Revenue or upon special inquiry addressed to the authorized representative of the Treasury Department.

In regard to the 27 doubtful cases, after special investigation, the following classification can be made:

Sixteen cases were found proper; 9 cases were not computed in accordance with the view of the staff of the committee, but nevertheless were not clearly illegal or outside of the discretionary authority vested in the commissioner by the revenue acts; 1 case appeared not to be in accordance with current board decisions and was promptly withdrawn for review by the general counsel's office when attention was drawn to this fact by the committee's representative; 1 case is awaiting information from the bureau on certain doubtful points.

It is of course apparent that the Members of the House would have no better conception of the intricacies of these cases if there were submitted to them all the documentary evidence accumulated over a period of years by the experts of the Treasury. This refund is based on the complicated tax reports of nearly 200 concerns which constitute the United States Steel Corporation. The selected men in the department have been specially assigned to delve into all the facts. Having confidence in their ability, confidence in the Secretary of the Treasury and his able assistants, the Undersecretary and Assistant Secretary Bond, it would seem to me to be the part of wisdom to act on their judgment. I am confident the House will approve the recommendations of the Treasury and appropriate the $75,000,000 called for in the urgent deficiency bill for the payment of refunds. [Applause.]

[Mr. TREADWAY had leave to revise and extend his remarks.]

Mr. WOOD. Mr. Chairman, I yield 10 minutes to the gentleman from New York [Mr. DEMPSEY].

Mr. DEMPSEY. Mr. Chairman and gentlemen of the committee, this question of the refund to the United States Steel Corporation comes before this House in a most peculiar way. The question has been raised as to the repayment to-day. If gentlemen will examine the report of the committee which is presenting this bill, they will find in that report the statement that the question of this refund to the United States Steel Co. was not before the House, that it was only before it in a retrospective or historic way, and that report was filed days ago before there was any intimation, as I understand it, that the gentleman from Texas [Mr. GARNER] would review this question.

Mr. GARNER of Texas. Mr. Chairman, will the gentleman yield?

Mr. DEMPSEY. Yes.

Mr. GARNER of Texas. It was filed long after I made the statement on the floor of the House.

Mr. DEMPSEY. The gentleman, as I understand it, did not say that he was going to contest this question on the hearing of this bill.

Mr. GARNER of Texas. What does the gentleman think I was talking to? Just to hear my voice ring?

Mr. DEMPSEY. The gentleman was talking to the matter generally, but the fact is that that report has been here all these days with that statement in it.

Mr. GARRETT of Tennessee. Does the gentleman mean the report on this deficiency appropriation bill?

Mr. DEMPSEY. Yes.

Mr. GARRETT of Tennessee. Oh, the bill was only reported yesterday. The report is dated as of January 4.

Mr. DEMPSEY. The report has been in type and available for days.

Mr. GARNER of Texas. The gentleman is not accurate in that.

Mr. DEMPSEY. That is my understanding.

Mr. GARNER of Texas. I have tried to get the hearings on this case.

Mr. DEMPSEY. I am talking about the report.

Mr. GARNER of Texas. The report could not be gotten up until the hearings were finished.

Mr. DEMPSEY. Oh, yes; it could.

Mr. GARNER of Texas. Does the gentleman mean to say that the committee would make up its report without any information on the subject?

Mr. DEMPSEY. Oh, no; but with the minutes of the reporters before them. But let us get to the next question. Is there anything unusual in this matter? This House again and again, and as a matter of universal and uniform and uninterrupted practice, has always observed this course. We take the report from the proper department, and while we swear witnesses, that report in itself and of itself is more important in the usual and ordinary case than all of the hearings of all of the witnesses before us. That should be peculiarly true in this case. Why? In many cases this House has the same facilities for examination, for investigation, as the department itself, but in a case like this, this House has no facilities, has no way in which to make the examination. Unless it finds somewhere in some incidental way something to challenge, it has to accept the finding of the department. Here we find a report so voluminous, involving such a tremendous amount of testimony in its various forms, that it would take trucks to carry them—a whole line of trucks. Here are these gentlemen sitting on this joint committee, listening for five hours, and the gentleman representing the Democratic side [Mr. COLLIER] says, after hearing it, that he would not presume, after spending five hours, to even express an opinion upon that which it had taken 10 years of expert investigation to determine.

In addition, then, to the usual safeguards of the department itself we have this joint committee, and this joint committee does not undertake to challenge, but, on the contrary, the gentleman from Mississippi expressly said and said repeatedly and clearly that he did not challenge the motives, and that all he questioned was the method. The gentleman did not point out a method. He did very clearly cover the point that several methods have been excluded by the Court of Claims and the Board of Tax Appeals, so that the Treasury had only a limited opportunity and a limited way to investigate, and he suggested no alternative to the method that was employed. He did not tell us how that method was improper. He said it was a bargain counter, but I never knew in my experience as a lawyer

or as a legislator where a compromise was reached where it was not by the bargain-counter method. Each side has to concede, each side has to give way, each side has to admit that it can not get all that it contends for, and in that way and that way only can a settlement be reached. In addition to the usual methods having been pursued, and, secondly, the protection of the joint committee having been afforded, we have this, which I feel sure I am voicing the sentiment of the whole country in saying: We have the most remarkable, the most eminent Secretary of the Treasury, who has given this country a most unusual administration of that great and high and responsible office. Years after all of us have passed, I hope, to our reward, this Secretary of the Treasury will have his memory enshrined in the minds and in the thoughts and admiration of the American people, in line with and on the same kind of pedestal as Alexander Hamilton, the first great Secretary of the Treasury. And we will not forget also that we have an admirable Commissioner of Internal Revenue, Mr. Blair. So we have the thought that we have at the head of this department of the Government men in whose integrity and ability we can repose the utmost confidence, and then when you come to subordinates, they are the highest paid, the most expertly trained, the ablest men in the service of the Government.

And they have only one conscious object, and that is to do justice and right, and, secondly, back of all that unconsciously all the time is the desire, the honest and proper desire, to make a record for themselves, to show that they have done well for this Government that they are serving, that they have preserved its interest and protected it at all times, that they have given it the best service it could secure in intelligence, in integrity, in a conscientious and active way, and every man here who is brought into contact with this department finds in each and every instance that the individual taxpayer never receives one penny more than that to which he is honestly and justly entitled, and as to which he can show his right to have it. It is not a question of his right to it. He must demonstrate to these vigilant and determined men a clear and indisputable right before he receives one penny of refund. There being no charge of fraud, there being no suspicion of collusion, there being the admission that these men have acted uprightly and honestly and with intent to protect the Government; and it appearing that in this particular case a claim of $160,000,000 is to be settled for $26,000,000, a most splendid result for the Government; and with this tremendous amount of evidence involved, with the case certain to take a prolonged period of time and to be litigated at enormous expense; and with this Congress having directed the Treasury Department, as it did by the act passed in May that it must do precisely what was done in this case, why should not the Treasury Department be commended for the work which it has accomplished, for the result that has been attained, rather than be criticized when it is admitted that there is no sound or just ground of criticism? No one points out any mistake.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. BYRNS. Mr. Chairman, do I understand the gentleman from Kansas has but one more speech?

Mr. ANTHONY. Yes.

Mr. BYRNS. Then, Mr. Chairman, I yield the remainder of my time to the gentleman from Texas.

The CHAIRMAN. The gentleman from Texas is recognized.

Mr. GARNER of Texas. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD by including in those remarks official communications from the Treasury Department and from the chief examiner of the joint committee of the House and Senate.

The CHAIRMAN. The gentleman from Texas asks unanimous consent to extend his remarks in the RECORD by including statements of the Treasury Department and of the chief examiner of the joint committee. Is there objection?

There was no objection.

Mr. GARNER of Texas. Mr. Chairman and gentlemen of the committee, I did not intend again to refer to the question of estimates that I spoke about the other day when I had the pleasure of addressing the House of Representatives. But since my friend from Kansas [Mr. ANTHONY], as well as my friend from Oregon [Mr. HAWLEY], have referred to estimates, I think I shall again detain the committee for five minutes on that subject.

I saw in the newspapers, after I had made the statement on the floor of the House concerning the estimates and the misleading of the Congress by those estimates into the passage of a bill which they would not have otherwise passed, in my opinion, the Secretary of the Treasury said that my statement did not fit the settlement. He did not give the facts and he did not show wherein my statement did not fit the settlement. He also stated that he spoke with responsibility and that I spoke without responsibility. I do not know just what he meant to imply by that term, but if he meant to say that the Constitution of the United States threw around me a cloak that did not also protect him, for the purposes of this discussion or that discussion, the Constitution can go out of the window, so far as I am concerned.

I am going to utilize this five minutes, and I am not going to make a single statement myself; but am going to let the President of the United States make the statement. On December 4, 1928, the President of the United States, in response to his duties, sent a message to the Congress reciting the state of the Union, and among other things he said this—

> Last June the estimates showed a threatened deficit for the current fiscal year of $94,000,000. Under my direction the departments began saving all they could out of their present appropriations. The last tax reduction brought an encouraging improvement in business, beginning early in October, which will also increase our revenue. The combination of economy and good times now indicates a surplus of about $37,000,000.

That was on December 4. He also sent a message to Congress on December 11, and it reads, in part, thus:

> I have the honor to submit herewith for your consideration a supplemental estimate of appropriations for the Treasury Department for the fiscal year ending June 30, 1929, and prior years for refunding internal-revenue taxes illegally and erroneously collected, $75,000,000.

Now, it does not take a third-grade mathematician to tell the difference in the condition of the Treasury on December 11 and the condition on December 4. If you take $37,000,000 from $75,000,000 you will have $38,000,000 left.

But that is not all. We had in the meantime passed the Greek loan bill drawing on the Treasury for $12,000,000, a sum that would make the deficit $50,000,000. I stated then, and I repeat now, that as the result of misinformation given to the House of Representatives—not intentionally by the President; I do not suppose that anybody would say that any President of the United States would make an erroneous statement intentionally—but the facts showed that the Treasury were "in the red" for $38,000,000 at that time. Who caused him to make that mistake? Undoubtedly the Treasury Department was the place where he got the information on which he based his statement.

I said then that it was getting goods under false pretenses for the Secretary of the Treasury to come before the Committee on Ways and Means on the 6th day of December urging us to spend $12,000,000 on the Greek loan when, as a matter of fact, his officers knew there was a deficit of $38,000,000, and that, added to the $12,000,000 of the Greek loan, would make $50,000,000. I do not believe it is right in making estimates to fit them according to the way you want Congress to vote. I criticized it, and I criticize it again, and I think it my duty to criticize it.

Gentlemen have referred to the estimate I made a year or two ago on tax collections. That estimate was within $5,000,000 of being correct. In the consideration of that same bill Mr. Mills, the Assistant Secretary of the Treasury, when before the Committee on Ways and Means considering that legislation, estimated the refunds for this year at $138,000,000. I will put that extract from the hearing in the RECORD. (See Exhibit No. 1.)

I had the right to depend upon that estimate. It turned out to be $67,000,000 wrong. You will remember that I also told the House that if we should abolish affiliated and consolidated returns we would get $50,000,000 more. We got an admission out of the Treasury that we would get $25,000,000, and I made an estimate of $50,000,000. I made some other estimates that accounted for $117,000,000 that you could reduce taxes. But I do not want to refer to the estimates to a greater extent. I believe I have had pretty good luck in making estimates, at least I am willing to compare mine with the Secretary of the Treasury, with all of his information. For the last seven years take the record and check it up and see whose estimate was the closest.

But I want to discuss just for a moment the basis of information that this House has with reference to this refund. Now, I want each of you to ask yourself this question: What do you know, if anything, about the merits of the $75,000,000 for tax refunds in this bill?

Are you willing to go home to your constituency and say that you voted for an appropriation of $75,000,000 to pay refunds, when you had no knowledge as to the merits of a single one of them? The highest approval we can give of any claim against the Government, the final and conclusive approval of that claim against the Government, whatever it may be, is by

appropriating the money to pay it, is it not? And you are going to appropriate $75,000,000 for refunds that you have got to admit to your constituents you do not know anything on earth about the merits of. Now, does anybody controvert that?

Whose duty is it to find out about the merits of a claim in excess of $75,000? It is the duty of Mr. HAWLEY and his joint committee. In addition to that it is the duty of the Appropriations Committee in the final analysis, but it is the duty of the joint committee to give you information. When I appeared before the Appropriations Committee day before yesterday they complained very bitterly and said it was not their fault that you had no information; that they had a duty to perform and they could not afford to go into the question of the merits of this proposition, but it was the duty of the joint committee, did you not? I await someone to dispute it. Gentlemen, I do not control the joint committee. I wish I did. I would have an investigation, and the only information we have ever gotten is because the clerk of the joint committee, a conscientious fellow, said this was such a stupendous claim that he wanted Mr. HAWLEY to call the committee together, and he did call it together for that purpose the first time since it has been in existence. And what did it do? It had a 5-hour hearing, and it developed the facts as they have been set out here by Mr. COLLIER and others. It developed a fact that you did not know anything about and that I did not know anything about, and no one would ever have known anything about it if we had not had this little investigation.

It developed the fact that instead of a refund of $15,000,000, the Steel Corporation had already received $31,000,000 on the same year's taxes. I said, "That can not be so." They said, "Yes, sir; that is so; we have already refunded that to them by giving them credit on their taxes for that year, a credit of $31,000,000." Then we tried to find out how they settled this case. We found out from the Assistant Secretary of the Treasury that they settled this case by considering four methods, not by regulations of the department, which had been made down there for 10 years, good regulations, regulations that all taxes ought to have been settled by and regulations that most all taxes have been settled by. He did not settle it by the regulations of the department, he did not settle it according to the decision of the Board of Tax Appeals, neither did he settle it by the rule of the Court of Claims, but he settled it by another rule, with the assistance of the opinion of the lawyer of the Steel Corporation. That is in the hearings. He considered four sources. He considered, first, the regulations of the department; second, the Board of Tax Appeals; third, the Court of Claims; and, fourth, the opinion of the lawyer of the United States Steel Corporation. Now, I said, "That is wrong, Mr. Secretary." "Well," he said, "I think we are getting off for less than if they went into court." That was his reply. I said, "Mr. Secretary, if the Steel Corporation does not owe these taxes you ought not to cheat them out of them and force them to pay more than they ought to pay; you ought not to bargain with them and get them to pay more than the law requires." That is the reason I condemn this bargaining transaction across the counter by the Treasury Department.

Ah, I think I can illustrate it so it will impress you. There was a report over here the other day about a refund to another company. There was a report about a refund made to the Aluminum Co. of America but you only saw this information in the newspapers. You get your newspaper and look at it and you will see this information: "Refund to the Aluminum Co. of America, $621,626.04." That is what you saw in the newspaper but that was not all of it; that was not the picture. In that same document, which is not given out for publication, which is a secret, a secret to all intents and purposes as far as you gentlemen are concerned and as far as I am concerned, until I got permission to look at it. I am a member of the committee, but the clerk over there is so careful, so jealous of his prerogatives and not wishing to extend them or to exceed them that he said, "I wish you would go and see Mr. HAWLEY and get his permission." I did and I did get some information. I am a member of the committee but I can not even see the papers in his archives which are official documents, sent there by virtue of law. The Aluminum Co. of America had already been allowed as a credit $665,177.18, and in abatement they give them just a little Christmas present, $622,249.46, or a grand total of refunds and credits for taxes paid in one year, 1917, of $1,287,426.64.

Now, here is what I want to call your attention to. How did they arrive at that amount? According to Mr. Bond, in the Treasury Department, they arrived at it by four different methods.

One, the regulations of the department, the decision in the Grand Rapids case and the United Cigar Stores case, and what else? The attorney for the Aluminum Co. Mr. Mellon, this grand Secretary that you hear so much about to-day, this man who will never perish from the thoughts of the American people when we are gone and forgotten, this man sits on that side of the table as Secretary of the Treasury, and if reports are correct that he owns the Aluminum Co., Mr. Mellon, the citizen of Pittsburgh, Pa., sits on this side and determines how much he owes the Government.

Do you think this system is a good system? Do you believe it is a good system that you have no regulation or measuring stick to see definitely how much is owed by taxpayers? If you had a law that would say to the Aluminum Co., "You owe so much in taxes and you can not get off for a dollar less," that would be one thing; but instead of that, according to the hearings, both before our committee and the hearings here, they try to settle it as a compromise settlement.

Do you think the Government is going to get the best of it when the Aluminum Co. of America starts in to compromise with the Secretary of the Treasury? [Laughter.] We have laws in most States that a judge can not sit in the trial of a case where he has an interest. I know that is the law in Texas, and I presume it is the law in most of the States, because undoubtedly it is a wise law. Here is a man sitting in judgment on large sums of money, millions of dollars involved, trying the case, if current reports are correct, of a concern in which he controls or owns a majority of the stock.

Do you believe this is good public policy? Do you believe you can defend this before the American people? Ah, sir, what I would do if I were Secretary of the Treasury under present conditions! The Secretary, as I recall, resigned as a director in sixty-odd corporations when he went into the Treasury Department. They have had applications for refunds.

Under the law at the present time he can sit down and reach an agreement with any one of them that is binding on the American people, accepting 10 cents on the dollar for the amount of taxes due. I would be proud to say ," Yes; I own these great corporations or I am interested in them. I have made a success in life." I admire him for the success he has made in life. I am not opposed to big business; I am for big business and I believe in it. I believe it has helped to develop this country and I am not an enemy of big business; but I would be proud of the fact, if I were Andrew Mellon, that I had made a success in business and I would herald to the American people the corporations in which I was interested and how much taxes they had paid and how much in refunds I had given them and how many credits they had been given, and I would say I was proud of it; but he will not do this. He will not even let you look at them.

Secrecy! Why, Mr. TREADWAY, you were speaking about my leaking, and I thought at the time that every time we have a meeting over there, generally, TREADWAY is the first one to get to the door to leak and I think he was jealous because he was not there that night. [Laughter.] I think he was just a little jealous, and I am not blaming him for not being there because a man of his social standing and qualities could not afford to come out at night even to attend a meeting of the joint committee. [Laughter.]

Now, Mr. HAWLEY, I am going to call on you, sir. We have some records over there and I am going to put some of them in the RECORD. Here is one of them which was sent to each Member. I tried to get it published, you will remember. We have on the Army bill, how many pages of hearings, Mr. ANTHONY?

Mr. ANTHONY. About 1,000.

Mr. GARNER of Texas. About 1,000 pages. For one-half the money it took to take down and print the hearings on one appropriation bill you can publish every official record there is in the joint committee. Why do you not do it? They are official documents. They are documents of that committee bearing on the duties which you assigned us to perform. You can not get to them. Let me see one of you come over there and try to see one of them. I could not even see one of them without getting permission. I ask you now, sir, will you publish and put in print the actions of your committee since it has been in existence? I do not see Mr. HAWLEY here just now, but I call on him, as a matter of public record, to make them public and let the country see them. You ought not to be ashamed of them. And whenever you find a Member of Congress who is so anxious, outside of matters of foreign affairs, to keep everything in his committee secret he is not trying to serve the House of Representatives or the country, in my opinion, like he ought to.

Mr. DEMPSEY. Will the gentleman yield for a question?

Mr. GARNER of Texas. Yes; but I do not want any oration like you made this morning. I want a question.

Mr. DEMPSEY. The chairman of the gentleman's committee said that there was an understanding in the committee that the proceedings of the committee should not be made public because

they might embarrass the lawsuit and lose that case to the United States if the case proceeded.

Mr. GARNER of Texas. I will tell you about that, and that will satisfy you without asking any more questions. Here is what happened: I notified him in advance that he must have a stenographer there. I asked for a stenographer. I said I thought we ought to have our hearings taken down, and when we got there we discussed the matter and the Treasury Department said it might hurt them. That is what they said. They decided not to have it taken down. I said, "I am going to tell everything that happens in here." I gave them fair notice right then. Now, there was but one thing to do, and that is what they do in some of the churches—I believe in the Baptist Church—and that is to "withdraw from me." [Laughter.] Now, they did not withdraw from me, and I kept my promise, because I am telling it and I am going to continue to do it. [Applause.] So I have not breached any faith, to say the least of it.

Mr. LOZIER. Will the gentleman yield?

Mr. GARNER of Texas. Yes.

Mr. LOZIER. There was no agreement in which the gentleman from Texas, and the gentleman from Mississippi [Mr. COLLIER] participated that the proceedings should be kept secret?

Mr. GARNER of Texas. No; never. Now, Mr. HAWLEY and Mr. ANTHONY—God bless him—I do not think there has ever been a better man in Congress than DAN ANTHONY. [Applause.] I have had a good deal better opportunity of knowing him than many of you gentlemen have. [Applause.]

They want it to appear that the Steel Corporation is all that is involved. Let me tell you something. I went to the Treasury Department, or rather I telephoned up there—but before I get to that I will give you some of the other cases that came up this fiscal year. I said to Mr. Parker, I want you to give me five of the next largest cases that is to be paid out of this money. He said, "Mr. GARNER, I do not want to do that, I may get into a good deal of trouble," and asked me to get Mr. HAWLEY'S permission. Mr. HAWLEY said, "Yes; give them to him," and so he gave them to me. They amounted—these five cases—to twenty-four million and some dollars. None of these were published in the papers among the list of refunds for they were for this fiscal year but are to be paid out of your money—money that belongs to the people of this country. You never knew anything about it; now five of these largest cases I will put in the RECORD. (See Exhibit No. 2.)

I did not know about these credits being so much until we got into the Steel Corporation. The other day I said that $65,000,000 would go back to the Steel Corporation. The Treasury Department said that my statement did not fit the facts. "Well," I said to myself, "you better look into that proposition, perhaps you have made a mistake." I based it upon what Mr. Parker told the joint committee. I said to Mr. Parker, "You told me this, and Mr. Mellon said that my statement does not fit the facts, and that is the only one I do not know about. Will you not give me the items sustaining the statement?" I said, "Parker, does your record and the Treasury Department's agree?" He said, "I think they would." I said, "I wish you would go up there and see the Treasury Department and let them audit this statement that you have given me." He came back in a few days and said that they had looked it over and made a change of $2,000—a change of $2,000 out of a total of $69,000,000.

Now, remember this—the tax that was voluntarily rendered under the Democratic administration, and this greatest Treasurer of all times since the days of Alexander Hamilton—has given back $69,000,000. Does that shock anybody? This angelic company that voluntarily paid the money. The Treasury Department should have said, "I will not charge you what McAdoo increased the amount; we will accept the $199,198,000." But instead of that Mr. Mellon cut it down to $173,000,000—from $217,000,000. I say I don't know whether that is right or not, but somebody ought to know besides the Treasury Department.

This House ought to have some information in a transaction of that character. Ah, sir; we have some. They would make it appear here that there is no criticism of these refunds. You remember that I asked Mr. HAWLEY when he spoke a few moments ago if this man was his agent, and he said yes. He is the only man that goes to the Treasury Department. HAWLEY does not go up there, I do not, and we do not have a meeting more than once a year, but this fellow goes up there and examines. The law says that the committee can go up there and look at it, and he has gone up there as the agent of the committee and he has looked at it. I want to show you how he has to do to defend himself. You remember the other day that you saw something about the R. J. Reynolds Tobacco Co. being refunded $6,500,000. Was there any criticism of that by the joint committee? Yes. This agent criticized it and protested against its payment. How else could you protest except through this joint committee? This man went up there and examined it, and here are 25 pages of manuscript urging three good reasons why it should not be paid. Did that have any effect on the Treasury? No. They said, just like BILL WOOD says, that that committee was never intended for any purpose, and that it is not worth a damn anyway. I am going to put the record of this case into the RECORD. He uses the term "X Tobacco Co." He was afraid to put it in its right name, but in the course of his statement I easily identified it with the Reynolds Tobacco Co., because it is the largest one, and is the largest refund. So I take the responsibility here and now, although Mr. Parker marked it as the "X Tobacco Co.," of saying that it was the Reynolds Tobacco Co., so the record may show it. If somebody wants to deny it, I shall furnish the proof. I am going to put that into the RECORD. (See Exhibit No. 3.)

Mr. Parker points out three distinct reasons why that thing should not be paid.

They say that you must not impugn the Treasury Department. I do not charge the passing of money from hand to hand. No. But what is the difference to me when I lose a billion dollars from the Treasury Department, whether it is handed out, sneaklike, at night, or by rules and regulations and bargains across the counter, where I lose the same amount? My loss is the same, whether you filch it from my pocket or barter it away across the table.

I shall make another statement, although it may cost this fellow his head. I forced him yesterday almost to give me this statement. I said, "Parker, it is from your source and your source alone that we get this information. I have nothing here except what you furnish me; I have no way of determining from that data how much has been paid by the Treasury Department that was not authorized in law or in equity, and I want you to tell me your best judgment of how much money the Treasury Department has paid out in the few cases that you have examined that was not justified by law and equity." He said, "Mr. GARNER, I do not like to do that." I said, "By the gods, it is your duty to do it. You are drawing a salary from this Government, you are an honest man, and you ought to have courage enough to speak." He did not want to say anything, because he might see in the distance his job vanishing, and I do not blame the fellow, but I forced him along, and he finally said at least $20,000,000, which I have questioned. In the few cases that Mr. Parker has examined in the Treasury Department—and he is an expert accountant and engineer and a man of long experience, who served in the Treasury Department, under an almost forced admission—he says that in his judgment the Treasury Department has handed back to the taxpayer over his criticism and protest where he had no legal or equitable right to it, money to the amount of $20,000,000! In the face of that, the only information you have, coming from your own committee, how can you make an appropriation of $75,000,000? Why not delay this appropriation until you can get an investigation? You are the only power, Mr. ANTHONY, that can reach this situation. When you withhold this $75,000,000, the Treasury Department and the country are going to understand that somebody is going to look into the matter. Why do not you look into it?

I am willing, Mr. LONGWORTH, for you to appoint a committee of five—three Republicans and two Democrats—and you may select your own committeemen with the experts that you now have, who are drawing salaries, a half dozen of them, of from three to six thousand dollars a year, to make an investigation. There is plenty of time. Let us investigate the matter. But they will not give us any information at all, and Mr. HAWLEY had the audacity to say that that was the fault of Congress! True, Congress passed a law, and it is on the statute books, but does anybody remember how strongly the Treasury Department fought the publicity of tax returns? Nobody led the fight more than Mr. Mills and Mr. Mellon against publicity. This joint committee is a compromise on that proposition, and as Mr. WOOD said, of course, speaking for the Treasury Department, because he hikes up there any time he gets the slightest information, and after I made the statement there to the Appropriations Committee and it was taken down, of course Bill hiked it up there within an hour; but as Bill said, the joint committee was never intended for any purpose, and it was just $40,000 to keep them from looking at Uncle Andy's books, and it was a cheap price, was it not? To keep them from looking at the books. Do you not think it is cheap? But you said you did not think it was worth a damn anyway, and I agree with you, unless HAWLEY would do something with it.

[Laughter.] I will put that statement of Mr. Parker's into the RECORD. (See Exhibit No. 4.) Sixty-nine million dollars. Remember, I said $65,000,000, and when I make estimates I try to underestimate. I thought, since I saw so much of these credits and refunds, that the credits were outrunning the refunds. Mr. ANTHONY, I reckon that you made the report, or your clerk did, or Mr. WOOD's clerk, and you reported how much back taxes you had collected, and how much refund there was. According to the RECORD here, you ought to have reported the credits, which may be more than a billion dollars.

Be fair. Give the full picture. You would have done it, I guess, if you had had that information; but the records show here in the steel case that the credit was twice the refund, that it had already been credited with twice the refund that nobody knew anything about. I telephoned to Mr. Alvord, and I said, "Alvord, a certain friend of mine has told me that they have a list of credits up there." I do not believe that Mr. Alvord would deliberately say anything that he did not believe to be true. If he had the knowledge he would tell you the truth about it. I telephoned, and I said, "I would like you to send me a list of credits that you have—corporations—prior to the time that they would have to report to the joint committee." And he said, "I have not a list of them, and it would take considerable labor to do that."

"Well," I said, "I thought you had a list. If you have not a list, will you send me up 25 of the largest corporations?" He said, "I think I can send them up to you." He did. What do I find from them? I am going to put this all in the RECORD. (See Exhibit No. 5.) He does not give me the names of the corporations, but you can get them over in the committee room now. What was the object in not putting in the names? Mr. Alvord did not want to take the responsibility, and I did not want to see him get his head cut off. I said, "All right, Alvord; send them up without mentioning the names."

Now, what do I find on the subject of refunds? "Adjusted by refunds, $1,026,000; adjusted by credit, $24,562,000; adjusted by agreement, $5,496,000."

Mr. AYRES. Mr. Chairman, can the gentleman state in what years those occur?

Mr. GARNER of Texas. Yes. Original taxes for various years.

How much of these taxes are being refunded and go back to the taxpayers? They try to make it appear to you that the percentages are small. But take this case of the United States Steel Corporation: $173,000,000 taxes; $69,000,000 returned. They are figured out in the percentages. Here is one of these corporations—I do not know what one it was, but it was a good large one: Original tax, $22,000,000; credit—not refund, but credit—$7,787,686. In some cases they are more than 33⅓ per cent. Here is an original tax for 1919: $927,000; and tax, none. He gets all of his back. Andy Mellon just made a clear swipe of his, and gave them all back.

Mr. MOORE of Virginia. Mr. Chairman, will the gentleman yield?

Mr. GARNER of Texas. Yes.

Mr. MOORE of Virginia. These credits are all practically refunds?

Mr. GARNER of Texas. Yes; they are all practically refunds. But you do not know anything about them, Mr. MOORE, because the Secretary of the Treasury does not have to report it now under the law.

Mr. ANTHONY. Mr. Chairman, will the gentleman yield?

Mr. GARNER of Texas. Certainly.

Mr. ANTHONY. Are any of these so-called credits offsets against additional taxes?

Mr. GARNER of Texas. Certainly. Here is a man from the Steel Corporation, the best taxpayer of the country. The Treasury Department says it is one of the finest that there is. Here is an agent from the Steel Corporation paying taxes every time they tell it to. But they never said anything to CARTER GLASS, or McAdoo, or Houston about giving them back anything. Every time that McAdoo, or CARTER GLASS, or Houston examined them their taxes went up, and every time they examined them under Uncle Andy the taxes went down.

That is a darned funny thing how they can do that. Four of them or five of them under a Democratic administration, all good auditors, lawyers, engineers, accountants—in all cases that went up to McAdoo and were investigated the taxes went up. Under CARTER GLASS an audit was made and they found more taxes. Houston went in, and before he went out they paid him $4,000,000. Then Uncle Andy gets in and they wait to size him up; and they wait until after the election of 1924, and then they asked him to give them back $44,000,000. Each audit that Andy made resulted in the taxes being reduced.

Gentlemen, does that seem natural? I wonder why the Aluminum Co. of America did not say something to McAdoo and to CARTER GLASS and to Houston about paying too much taxes. They paid too much in 1917. They never said anything about it until Andy got in, and then Brother Charles, or his nephew, or whoever it was, said, "Mr. Mellon, you used to be a director of the company. It is true we were prosperous, but when those damned Democrats were in power they collected too much money from us. I want you to adjust this thing." Now, the Secretary of the Treasury did it without law or regulations. There is no rule or law governing the department; no rule or law by court or by a board of tax appeals or a court of claims. The agent said, "I want to tell you that the Democrats collected too much money, and I want you to adjust it." And Uncle Andy, like one of those little cupids, said, "We will see about it"; and he said, "Who is our best auditor?" They can make any kind of report you need. He sends them up, and audits it, and comes back and says, "It is right. For that one year alone McAdoo made you pay $1,187,000 too much." Of course Uncle Andy may not have had any stock in it, and was not interested; but he made the settlement.

Gentlemen, that is wrong. If it were my own brother, or a Democrat of any standing, I would say it is damnable. But you let a man sit across the table there and settle his own taxes without a rule of law or a regulation of the department governing him. When Congress inquires about it he says, "I can not let you look into it. You can not investigate it. You must not look into the facts, because I am the greatest Secretary of the Treasury since Alexander Hamilton. [Laughter.] I will say this: He is the greatest Santa Clause that has ever been in existence. There is nobody to whom he has not given things. I would like some of you to find out and tell the total credits that have been allowed.

I have got the total refunds and they are over $1,000,000,000. Up to this time you have provided for refunds over $1,000,000,000. They say nine hundred and ninety some millions, but that does not include this fiscal year. Now, from the investigation we have made it is shown that these credits are much larger in each instance than the refunds, we have a right to conclude that Andy has handed back to the taxpayers since he came into office more than $2,000,000,000.

Mr. WYANT. Will the gentleman yield?

Mr. GARNER of Texas. Yes.

Mr. WYANT. Has the gentleman a statement showing the amount of back taxes which have been collected by the present Secretary of the Treasury?

Mr. GARNER of Texas. Oh, yes. All you have to do, sir, is to read the report, and it amounts to $4,000,000,000, plus. I never knew that the people in this country were such gumps, especially these big fellows. You know they seem to be the only people who did not know how to render their taxes, or did not have sense enough to render them, these rich corporations. Everybody had sense enough to render their taxes and know how much to pay, but the rich corporations that did not have any lawyers; they did not have any accountants, they were short of engineers and did not have any way of ascertaining how much taxes they owed, just came in and made a big rendition because they loved the country, and then when Andy got in they said, "We don't love it quite as much as we did; give it back to us," and Andy has been giving it back ever since at the rate of a couple of hundred millions to $400,000,000 a year.

Now, gentlemen, if you will refuse to make this appropriation here is what will happen—and you are going to vote on it; you are going to do that; you are going to approve this by your vote on paper, if I am not mistaken—if you will refuse to make this appropriation that fellow sitting there, Mr. HAWLEY, that other bald-headed fellow that sits in the Speaker's chair, and the leader on your side, will get together and say, "Now, they are not going to give this money; we have got to make an investigation so we can get the confidence of this House," and they will make it. Why should it not be made? Mr. Mellon, are you afraid for this House to look into your administration? If you are, then there is all the more reason why we should look into it. If you are not afraid to have it looked into, why do you not welcome an investigation with open arms and say, "I am ready; come on." You will get your money and no honest taxpayer will lose a dollar by that investigation. That is what I am driving at now, trying to get Mr. HAWLEY and his joint committee to do what you asked them to do when you created them and what you expected them to do and what they have not done. But Mr. Parker has attended to his duty. He has communicated with the committee. Mr. HAWLEY was not present to answer my question so I will ask him again. For one-half the cost that Mr. ANTHONY spent in reporting his last bill you can have all the proceedings before the joint committee printed. Will you do it? I will give you time to answer in my time.

Mr. HAWLEY. The 1928 act authorizes us to print, and requires us to print, the reports which we get in at the end of the year, and that will be done.

Mr. GARNER of Texas. Are you willing to print the correspondence which your agent, Mr. Parker, has sent in? Why do you not print it in a public document so that these fellows here can see it? You have the printing privilege and by printing it you will let the Congress see what you have in there.

Mr. HAWLEY. I do not think it is within the province of the chairman of a committee to determine a question of that kind. I think that is for the full committee.

Mr. GARNER of Texas. Now, just wait. Now, then, Mr. HAWLEY, you are the chairman of the committee. Will you call them together and ask their permission to print it?

Mr. HAWLEY. There will be a meeting of the joint committee and I suggest to the gentleman from Texas that the matter of printing be taken up at that time. [Laughter.]

Mr. GARNER of Texas. Well, poor old HAWLEY. I feel sorry for him and I will tell you what he was not deserving of. They gave him a dirty dig in the Treasury Department. They did not think what they were doing or they would not have done it, but I am going to read it for the benefit of you ladies and gentlemen on this side.

HAWLEY and Senator SMOOT were in favor of approving the steel settlement. It is my recollection that SMOOT made the motion and HAWLEY wanted to do it. DAVE REED is a pretty smart fellow and I think one of the ablest men in this country. He was fair and frank enough when we started into this case to say, "Gentlemen, my firm is attorney for the Steel Corporation but not its tax attorney." I said, "That does not disqualify you at all in my opinion, because I think you are conscientious enough to serve the Government instead of serving your firm," and I believe this about DAVE REED; and when the approval came up to DAVE REED, he said, "No; in view of this hearing I will not take the responsibility of approving it." He said this although the corporation is located in Pittsburgh, Pa. Poor HAWLEY wanted to just approve it. HAWLEY is such an obedient vassal that whatever Andrew Mellon would ask him that did not involve dishonor he would do. He has no judgment on the subject. He does not want any, he does not need any.

Mr. HAWLEY. Will the gentleman yield on that point?

Mr. GARNER of Texas. Certainly, I will yield.

Mr. HAWLEY. Let me ask the gentleman two or three questions. The Secretary wanted the estate tax repealed, did I not oppose it?

Mr. GARNER of Texas. You did, and I commend you for it.

Mr. HAWLEY. He also wanted the intermediate brackets of the surtax changed, did I approve of that?

Mr. GARNER of Texas. You changed them downward, HAWLEY.

Mr. HAWLEY. Not this last time.

Mr. GARNER of Texas. No; not this last time and I do not blame you. When you put them at 20 per cent, Mr. Mellon said he would never ask for any lower rate.

Mr. HAWLEY. That is not answering the question. They proposed a revision of the intermediate brackets downward and I opposed them.

Mr. GARNER of Texas. Sure; because he was violating his agreement and you would not violate yours. I just said that about the gentleman.

Mr. HAWLEY. They also opposed the repeal of the automobile tax and I favored it.

Mr. GARNER of Texas. Yes.

Mr. HAWLEY. I might go on and give other instances.

Mr. GARNER of Texas. That is all right. You are doing very well, HAWLEY, and I hope you will keep it up. [Laughter.]

I tell the House what I wish, gentlemen. I love this House of Representatives. I have served here a quarter of a century. I think that in the House of Representatives lies the safety of the Republic. Ah, sir, I just wish you, HAWLEY, had a little iron up your backbone like Sereno Paine and Claude Kitchin had and would tell the Treasury Department what to do rather than have them tell you what to do. [Laughter and applause.] That is what you ought to do. Let the House of Representatives and the Ways and Means Committee, that the Constitution provides shall raise revenue, do the job, rather than have the Treasury Department crook its finger and tell you just what you should do and how you should do it.

Mr. HAWLEY. Will the gentleman yield again?

Mr. GARNER of Texas. Certainly; I will always yield to the gentleman.

Mr. HAWLEY. Has not the gentleman just agreed that I have disagreed with the Treasury in some matters involving hundreds of millions of dollars?

Mr. GARNER of Texas. Yes; and I just said that you have done pretty well and I hope you will do better. [Laughter.] You see HAWLEY wanted to approve this.

The CHAIRMAN (Mr. RAMSEYER). The time of the gentleman from Texas has expired.

Mr. GARNER of Texas. May I have 5 or 10 minutes by unanimous consent?

The CHAIRMAN. The time has been fixed by the House.

Mr. GARNER of Texas. Could the gentleman lend me two minutes?

Mr. WOOD. I will give the gentleman 10 minutes if the House will consent to it.

Mr. GARNER of Texas. I think the Chairman holds the committee can not change the time.

The CHAIRMAN. The committee can not change the time.

Mr. GARNER of Texas. Yes; can you let me have two or three minutes?

Mr. WOOD. I will give the gentleman five minutes of my own time.

Mr. GARNER of Texas. Thank you. That is very generous, Bill. I tell you, you are opening up and there is hope for you yet, old fellow. [Laughter.]

Now, the Treasury Department through Mr. Bond, communicated on December 20, after this hearing with the joint committee, addressing the letter to Hon. WILLIS C. HAWLEY, chairman of the joint committee, House of Representatives. Among other things he explains the Steel case, and here is what he said:

> The Treasury does not expect the committee to approve the refund. To do so would require it to devote months to exhaustive study of the case.

HAWLEY devoted five hours and wanted to approve it and the Treasury said, "Why, you simpleton, you could not approve it intelligently without months of exhaustive investigation."

Mr. HAWLEY. Will the gentleman quote the words exactly, because I have a remark to make to him on that subject. There is something about "intelligence" there.

Mr. GARNER of Texas. I yield to the gentleman on intelligence at once, so there will be no discussion about that. I am afraid I would get the worst of it on that.

Mr. HAWLEY. And the imputation was as much against the gentleman from Texas as it was myself.

Mr. GARNER of Texas. No; because I did not want to approve it and you did. You were going with the Treasury. I knew it took more information than we had to intelligently approve it.

Mr. HAWLEY. But the gentleman had an opportunity, an official opportunity, to express his disapproval at a time when it would have counted.

Mr. GARNER of Texas. Yes; you tried to get me to do that and I declined. I saw the trap. It did not even have any paper over it like the traps they set for ordinary animals, and I said, "No; I will not jump into that trap."

Why, if DAVE REED could not approve this, if the Treasury Department says it would take months of exhaustive investigation to determine the merits of the proposition, are you going to determine it and approve it without that information by voting this appropriation?

I repeat that the highest approval you can possibly give any claim against the United States is approval by making the appropriation by the Congress, and you are proposing to approve all these things I have referred to by making the appropriation of $75,000,000 carried in this bill.

It is a long time that the American people have been coming to this question. It may be that they will forget it. It may be that the newspapers will not give the country a picture of it. I believe that they will give us a square deal. I want the country to understand that a man is in the Treasury Department, sitting across the table, bargaining with taxpayers, settling these claims without law.

Ah, gentlemen! Look at this practically. Supposing the Secretary of the Treasury was a bad man. Let us take out the purity and exalted character that has been pictured of him and reverse the picture and say he was a bad man. What an opportunity! He could say to one corporation "You pay me or I will take you by the neck"; and he could say to another corporation in competition with it, "Come on, I will refund 50 per cent of your taxes." He could also, if he happened to be a politician, which I know the the present Secretary is not—he could if he wanted to build up the greatest political machine in the world, because he would have every taxpayer under his thumb. He could not only raise $6,500,000, which the Republican Party had in the last campaign, but he could raise $10,-

000,000 in as many days, and every cent of it out of the taxpayers' money.

That system is wrong, and I predict that if he administers this office for another four years he will destroy this system because he will destroy the confidence of the American people in the system, and when he does that he will destroy the system. [Applause.]

The CHAIRMAN. The time of the gentleman from Texas has again expired.

EXHIBIT No. 1

TAX REFUNDS

Let us see what appropriations the Treasury Department has asked us to make during the fiscal years beginning with 1921, either for refunds in the current fiscal year through deficiency bills or in the succeeding fiscal year in the regular Treasury appropriations:

During the fiscal year 1921 we were asked to appropriate and did appropriate $22,635,000.

During the fiscal year 1922 we were asked to appropriate and did appropriate $67,590,500.

During the fiscal year 1923 we were asked to appropriate and did appropriate $133,105,000.

During the fiscal year 1924 we were asked to appropriate and did appropriate $117,000,000.

During the fiscal year 1925 we were asked to appropriate and did appropriate $150,000,000.

During the fiscal year 1926 we were asked to appropriate and did appropriate $149,250,000.

During the fiscal year 1927 we were asked to appropriate and did appropriate $175,000,000.

During the fiscal year 1928 we were asked to appropriate and did appropriate $173,000,000.

Now, in this fiscal year 1929, there are two appropriations for refunds pending in the total amount of $205,000,000.

From the above figures there can be no doubt as to the tremendous increase in the refundment of taxes. It should also be remembered that this only represents a part of the distributions to taxpayers, for it is probable that the credits which are made against other taxes due are nearly as large as the refunds.

Now, the Treasury told us in October, 1927, that the refunds had reached their peak. At this time before the Ways and Means Committee Mr. Mills estimated 1928 refunds at $151,000,000 and 1929 refunds at $138,000,000. (See hearings before Ways and Means Committee—revenue revision, 1927–28, p. 6.) It can be seen that he was much too low.

The Congress has never had a comprehensive idea of the reason for the enormous increase in refunds. We do know from fragmentary information that the Secretary of the Treasury himself has benefited to a considerable extent from these refunds. I believe it is proper in view of the above to call for the following information:

First. A list of all refunds, credits, and abatements of income, war profits, and excess profits taxes and interest thereon made to the Secretary of the Treasury, Hon. A. W. Mellon, his brothers, sisters, daughters, and cousins, and/or to any corporation in which any of them individually or collectively own any of the corporate stock, and/or to any corporation whose stock is held to any substantial extent by a trust, holding corporation, or other agency, which trust, holding corporation, or other agency is controlled directly or indirectly by the above-mentioned individuals, individually or collectively.

Second. In case the above can not readily be furnished, then the same information is requested where the above-mentioned persons own individually or collectively over 25 per cent of the stock of any corporation to which a refund is made and/or where the stock of the corporation is held to the extent of 25 per cent or more by a trust, holding corporation, or other agency which is in turn controlled by the persons indicated.

EXHIBIT 2

Five largest refunds and credits under section 710, revenue act 1928

(To December 1, 1928)

Name and address	Credit	Refund	Total credited and refunded	Interest
W. R. Grace & Co., New York City	$234,982.53	$2,373,297.54	$2,608,280.07 3,745,479.38	$1,137,199.31
Kolb, Louis J., et al., Philadelphia, Pa	1,580,573.50		1,580,573.50	None.
New York Life Insurance Co., New York City		2,394,615.47	2,394,615.47 2,634,700.15	240,084.68
Prudential Insurance Co. of America, Newark, N. J		1,503,219.02	1,503,219.02	130,402.60
Standard Oil Co. of Kentucky, Louisville, Ky		1,842,055.42	1,842,055.42 2,614,554.54	772,497.12

PARTIAL REPORT NO. 2 OF DIVISION OF INVESTIGATION ON REFUNDS, CREDITS, AND ABATEMENTS, FEBRUARY 28 TO NOVEMBER 1, 1927

FOREWORD

The urgent deficiency bill (H. R. 16462) approved February 28, 1927, appropriated $175,000,000 for refunding taxes illegally collected, but also provided "That no part of this appropriation shall be available for paying any claims in excess of $75,000 until after the expiration of 60 days from the date upon which a report giving the name of the person to whom the refund is to be made, the amount of the refund, and a summary of the facts and the decision of the Commissioner of Internal Revenue is submitted to the Joint Committee on Internal Revenue Taxation."

The above-quoted law evidently confers no power on the joint committee to formally disapprove refunds, nor, in fact, does it definitely require any positive action by the committee. However, the law does seem to imply that the joint committee will review refunds in excess of $75,000 in order that the Congress may be informed both generally and specifically as to the manner in which the millions of dollars appropriated are expended. It has also seemed proper to bring any doubtful points which developed to the attention of the Treasury Department within the 60-day limit provided in the law.

In conformity with instructions from the chairman of the joint committee, the division of investigation has been charged with the duties of reviewing the overassessments in excess of $75,000 along the lines briefly described in the preceding paragraph. The present report deals with all such overassessments reported by the Commissioner of Internal Revenue to the joint committee from February 28, 1927, to November 1, 1927. Refunds are still being reported and reviewed. November 1 has no significance other than being a convenient date for the purposes of this report.

SYNOPSIS OF GENERAL SURVEY

(For the period February 28, 1927, to November 1, 1927)

1. The total number of cases reported where claims have been allowed in excess of $75,000 amounts to 323.

2. The figures involved in these overassessments are as follows:

Total refunds	$32,627,518.82
Total credits	11,167,099.95
Total abatements	12,032,743.90
Total overassessment	55,827,362.67
Total interest allowed	12,246,811.99
Grand total of allowances	68,074,174.66

3. The amount of the above allowances payable from the appropriation of $175,000,000 is the amount of refunds plus the interest allowed, or the sum of $44,874,330.81.

4. Information from the Treasury Department is to the effect that approximately $122,000,000 of the appropriation had been scheduled for payment up to November 1, 1927. It results from these figures that—

(a) Thirty-seven per cent of the total of the cash refunds is allowed in cases where the refund is in excess of $75,000.

(b) Thirty per cent of the total appropriation was still unencumbered on November 1, 1927.

5. This is the first year since 1921 in which there has been an unencumbered balance in the refund appropriation on November 1. It can be predicted with reasonable certainty that the peak of refundments of tax has been passed.

6. An analysis has been made of the overassessments in excess of $75,000, which shows that the principal reasons for such overassessments are due to the application of provisions in the revenue acts found only in the excess-profits tax years ending with 1921. The percentage of overassessments, due to only three of these provisions in the excess-profits tax years, to the total of all overassessments examined, is shown below:

	Per cent
Special assessment ($13,823,254)	24.76
Invested capital ($8,986,219)	16.10
Amortization ($1,996,875)	3.58
Total ($24,806,348)	44.44

7. Analysis shows that the principal reasons for overassessments due to the application of provisions found in the revenue act of 1926 as well as in prior acts, are as follows:

	Per cent
Estate tax ($5,013,063)	8.98
Affiliation ($4,961,352)	8.89
Depreciation ($4,413,366)	7.91
Inventory adjustments ($4,371,547)	7.83
Valuations ($1,481,765)	2.65
Depletion ($1,410,840)	2.53

8. The facts shown in (6) and (7) above make it apparent that the special assessment and invested capital provisions of the revenue acts of 1921 and prior years are the most troublesome provisions ever written into our revenue acts and are still the cause in 1927 of over 40 per cent of all refunds, credits, and abatements. It is also apparent

that the most troublesome provisions in the present revenue act are those necessitating (1) the valuation of estates, (2) the consolidation of returns for affiliated companies, (3) the determination of depreciation and depletion, (4) the valuation of inventories, and (5) valuations for determining gain and loss. It is evident that the future simplification of the revenue act in the larger cases must of necessity rest largely on a more simple or definite method of determining valuations and other questions of judgment.

9. Overassessments for the years prior to 1922 represent 89 per cent of the total overassessments, leaving but 11 per cent of such overassessments allowed for 1922 and subsequent years.

10. When all tax cases prior to 1922 have been settled, refunds, credits, and abatements should be insignificant when compared with the present amount of these allowances.

SYNOPSIS OF INDIVIDUAL CASES

(For the period February 28, 1927, to November 1, 1927)

All overassessments in excess of $75,000 allowed by the commissioner from February 28, 1927, to November 1, 1927, have been reviewed. As previously stated these cases number 323. The results of this review are summarized as follows:

1. Taken as a whole the overassessments submitted by the commissioner to the joint committee show careful, legal, and just handling in the face of many difficult problems.

2. The review of the overassessments is instructive as to the operation and effect of our revenue acts and as to certain inequitable results permitted under such acts.

3. Two hundred and ninety-six cases, or 92 per cent, have been clearly proper and allowable on the basis of the facts shown in the report of the commissioner to the joint committee.

4. Twenty-seven cases, or 8 per cent, have been doubtful on the report of the commissioner and have been specially investigated through the files of the Bureau of Internal Revenue or upon special inquiry addressed to the authorized representative of the Treasury Department.

5. In regard to the 27 doubtful cases, after special investigation, the following classification can be made:

Sixteen cases were found proper.

Nine cases were not computed in accordance with the views of the staff of the committee, but nevertheless were not clearly illegal or outside the discretionary authority vested in the commissioner by the revenue acts.

One case appeared not to be in accordance with current board decisions and was promptly withdrawn for review by the general counsel's office when attention was drawn to this fact by the committee's representative.

One case is awaiting information from the bureau on certain doubtful points.

CONCLUSIONS

From the review of overassessments made it is concluded that—

1. The provisions of the revenue act requiring the use of personal or expert judgment are responsible for many refund cases.

2. The special assessment and invested capital provisions have been exceedingly difficult of administration.

3. The study of the individual cases is valuable as showing the practical operation and effect of our revenue acts and the desirability of simplification.

GENERAL SURVEY OF REFUNDS, CREDITS, ABATEMENTS, AND INTEREST STATISTICS

In making a general survey of all overassessments submitted to the joint committee by the Commissioner of Internal Revenue for the period from February 28 to November 1, 1927, it is first necessary to present the statistics covering these cases. Accordingly, the following figures are presented:

Overassessment cases for the 8-months' period from February 28 to November 1, 1927

TOTAL CASES, 323—MONTHLY AVERAGE, 40

Original assessment		$227,542,267.21
Total tax collected	$160,431,699.29	
Previous allowances	11,283,205.25	
		171,714,904.54
Overassessments		55,827,362.67
Composed of:		
Refunds	$32,627,518.82	
Credits	11,167,099.95	
Abatements	12,032,743.90	
		55,827,362.67
Interest paid on overassessments		12,246,811.99
Total of overassessments and interest		68,074,174.66

Reduction in original tax by overassessments reported, 24.53 per cent.
Average percentage of interest paid on overassessments, 21.93 per cent,

Classification of overassessments in re principal cause

Principal cause	Cases	Overassessment	Interest cost	Total overassessment and interest	Per cent of overassessment to total overassessments
Special assessment	42	$13,823,253.78	$3,479,384.78	$17,302,638.56	24.76
Invested capital	15	8,986,218.63	1,317,613.14	10,303,831.77	16.10
Estate tax	18	5,013,062.99	611,675.37	5,624,738.36	8.98
Affiliation	30	4,961,352.14	1,006,390.57	5,967,742.71	8.89
Depreciation	21	4,413,366.42	879,745.95	5,293,112.37	7.91
Inventory adjustments	22	4,371,547.43	950,785.23	5,322,332.66	7.83
Amortization	13	1,996,875.45	584,163.37	2,581,038.82	3.58
Valuations	10	1,481,765.32	266,584.13	1,748,349.45	2.65
Depletion	6	1,410,839.98	454,562.87	1,865,402.85	2.53
Miscellaneous court judgments	4	789,009.93	210,115.30	999,125.23	1.41
Transfer tax	4	780,470.25	270,633.41	1,051,103.66	1.40
Capital stock tax adjustments	3	390,163.39	85,426.05	475,589.44	.70
Gift tax	2	311,235.00	None.	311,235.00	.56
Foreign tax	2	213,562.83	20,426.30	233,989.13	.38
Miscellaneous	53	6,884,639.13	1,311,077.04	8,195,716.17	12.32
Interest recomputations	78		798,228.48	798,228.48	
Grand total	323	55,827,362.67	12,246,811.99	68,074,174.66	100

DISCUSSION

From a consideration of the statistics shown above, and the data in the files of the joint committee, a number of facts can be deducted with reasonable accuracy.

The total number of cases reported in the eight months' period, February 28 to November 1, 1927, has amounted to 323. This represents a monthly average of 40 cases showing an overassessment in excess of $75,000 each. The average overassessment per case amounts to $172,837.03, and the average interest per case amounts to $37,915.83 additional.

While the portion of the overassessments which are payable from the $175,000,000 appropriation consists only of the refunds of $32,627,518.82 plus the interest of $12,246,811.99 or a total of $44,874,330.81, it should be noted that the credits against taxes due amounting to $11,167,099.95 plus the abatements of tax assessed amounting to $12,743.90 or a total of $23,199,843.85, also have a direct effect on the revenue.

Information from the Treasury Department shows that approximately $122,000,000 had been scheduled for payment out of the appropriation up to November 1, 1927. This leaves an unincumbered balance in the appropriation amounting to $53,000,000, or 30 per cent as of the same date. It is also apparent that about 37 per cent of the total of cash refunds and interest can be attributed to cases in excess of $75,000.

A study of the present refunds and the figures of past years would indicate that the peak of refunds has been passed. This is the first year since 1921 in which there has been an unencumbered balance in the refund appropriation on November 1.

Attention is now directed to the "Classification of overassessments in re principal cause," shown on page 6. This table is believed to be very important for the purpose of showing what provisions of the law have been largely responsible for the large refunds already set forth.

At the top of the list stands the special assessment provisions (sec. 210 of the 1917 act, and secs. 327 and 328 of the 1918 and 1919 acts). While these provisions have not been in effect since 1921, they are still the cause of practically one-fourth of all overassessments of tax made in the current year. It appears that the special assessment provisions are perhaps the most difficult sections ever written into the revenue acts from the standpoint of equitable administration. The failure of the Bureau of Internal Revenue to publish definite rules, regulations, and restrictions at the outset has, in our opinion, contributed to increase the past and present difficulties with these provisions. A few scattered decisions and rulings have been published by the bureau and the Board of Tax Appeals and it is believed that the board will eventually formulate a fairly definite policy on this matter. Special assessment will be discussed in detail in connection with certain individual cases presented later.

Next to special assessment comes invested capital, another provision of the revenue act not in effect after 1921. The computation of this item is the principal cause in the allowance of some $10,303,000 in overassessments out of a total of $55,827,000, or 16 per cent. A few of the principal difficulties encountered in the determination of invested capital gives an insight into the complications involved in the application of this section of the Federal income tax laws. Under this section it is necessary to determine the actual cash value of property donated by stockholders, the cash value of tangible and intangible prop-

erty paid in for stock, the correct amount of depreciation sustained to date of application of the tax laws involving invested capital, and the correct amount of surplus earned for prior years. In addition to the above numerous technical and legal difficulties arise.

Overassessments in the inheritance or estate-tax cases account for 8.98 per cent of the total overassessments reported. An analysis of these cases indicates that the refunds under this section are partly due to the retroactive feature of the 1926 act in regard to reduction of rates. This cause, while standing for this year in third place in importance, will undoubtedly be in a position of less importance in future years. However, the valuation of estates will always present real difficulty under present methods of appraisal.

The fourth important cause of overassessments lies in the application of the consolidated returns provision (sec. 240). This provision, which permits affiliation of companies, is in effect under the revenue act of 1926. Inasmuch as this matter has been fully discussed in a report already submitted to the joint committee and as the House bill as reported by the Ways and Means Committee contains the remedy for this situation, it will not be further commented on here.

The determination of depreciation allowances is the fifth major cause of overassessments. The principal difficulties encountered in these determinations are March 1, 1913, valuations and rates of depreciation. A study is being carried out by the Treasury Department for the purpose of publishing certain authorized rates of depreciation for the various industries. This program has been considered by this division and has its hearty support. A solution to the troublesome question of March 1, 1913, valuations has not yet been found.

Inventory adjustments accounts for some 7.83 per cent of the total overassessments. Here the principal trouble is again an appraisal question, that of the market value of the inventory at a certain date.

Amortization, valuations for determining gain or loss, and depletion account, respectively, for 3.58 per cent, 2.65 per cent, and 2.53 per cent of the total overassessments. All of these questions involve valuations based on judgment.

It must be apparent from the above that, as far as the present revenue act is concerned, the most troublesome questions are found in connection with valuations and matter requiring the use of judgment.

A very large part of current overassessments are, however, made on account of taxes in the excess-profits tax years prior to 1921. In fact, 89 per cent of all the overassessments reported to this committee apply to taxable years prior to 1922. It should certainly follow that refunds should be very much less after the final closing out of the tax returns for the above-mentioned period.

INDIVIDUAL CASES

A comprehensive idea of the situation in regard to refunds, credits, and abatements can not be secured without a brief description of certain individual cases. Accordingly a brief description of the principal points involved in certain interesting cases will be given. These descriptions are all based on actual cases submitted to the joint committee by the Commissioner of Internal Revenue. As some of these cases concern nationally known taxpayers, it has been thought wise to substitute fictitious names for the real names, so that the facts can be studied without bias or prejudice. In every case, therefore, whether in the discussion or in quoted exhibits, the real name of the taxpayer has been changed to a code name.

This report will frankly criticize certain features in some of the individual cases, but it is hoped that the reader will keep in mind that there are two sides to most of these questions and that there are many border-line cases where it is impossible to justly determine all the doubtful points in favor of the taxpayer or in favor of the Government. Taken as a whole, the overassessments submitted by the commissioner are obviously proper on the basis of the facts shown.

A careful review has been made of all the 323 cases submitted up to November 1, 1927, and of these only 27 cases, or 8 per cent, have appeared sufficiently doubtful to require special investigation in the files of the bureau. Over one-half of these 27 cases appeared proper after intensive study.

There remains only 11 doubtful cases, which can be classified as follows:

Nine cases are not computed in accordance with the views of this division, but, nevertheless, they are not clearly illegal or outside the discretionary authority vested in the commissioner by the revenue acts.

One case appears not to be in accordance with current Board of Tax Appeals decisions and was promptly withdrawn for review by the general counsel's office when attention was drawn to this fact by the committee's representative.

One case is awaiting information from the bureau on doubtful points of fact.

The description and discussion of certain individual cases will now be presented:

Case No. 1

Code name: John Doe & Co. (Inc).

Figures involved:

Total original and additional assessment	$142,558.71
Final tax determined	26,297.88
Overassessment	116,260.83
Refunded	116,260.83
Interest allowed	38,148.52

Subject: Interest.

DISCUSSION

The recommendation of the General Counsel of the Bureau of Internal Revenue in this case will be found in Exhibit 1a attached.

From an examination of this recommendation and other data it appears that John Doe was the principal stockholder in John Doe & Co. (Inc.). This company erroneously included in its income the sum of approximately $226,408 for the fiscal year ending June 30, 1920, which should have been returned by Mr. Doe as an individual. This change in the allocation of income requires a refund to the corporation and the assessment of additional tax on the individual. There is also an inventory adjustment in favor of the corporation in the amount of $111,926.

The refund to the corporation amounts to $116,260.83. It may be roughly computed, on account of the two major adjustments noted, that about two-thirds, or $73,000, of the total refund is due to the allocation of income to the individual. The additional tax proposed against Mr. Doe amounts to $70,381, so that the net result to the Government is unimportant.

The action of the commissioner in this case appears strictly in accordance with the law. It is desired, however, to point out the disadvantage suffered by the Government in adjustments of this character.

Due to the mere reallocation of income from the corporation to the individual owner of same, the Government takes a heavy loss on account of the interest provisions of the revenue acts. The corporation receives interest from the time of filing its return in 1920; the taxpayer will pay interest on account of the additional assessment only from October 26, 1926. The advantage to the taxpayer is approximately $22,000 in interest.

The facts in regard to this situation are clearly stated in the letter of the Secretary of the Treasury to the chairman of this committee, quoted in full below:

APRIL 29, 1927.

Hon. W. R. GREEN,

Chairman Joint Committee on Internal Revenue Taxation.

Attention: Mr. L. H. Parker, Chief, Division of Investigation, room 321–A, House Office Building.

SIR: Reference is made to your letter dated April 30, 1927, in which you request that you be informed as to the amount of additional assessment made against Mr. John Doe on account of the reallocation of income returned by and taxed to John Doe & Co. (Inc.) for the year 1920 to Mr. John Doe, which reallocation of income resulted in a refund of $116,260.83 to the corporation. There is to be paid on this refund an amount of interest in the total sum of $38,148.52.

On account of this change, tax has been proposed against Mr. John Doe in the sum of $70,381.71. This tax results to Mr. Doe as a consequence of the reallocation of the income to his account.

The taxpayer has filed a petition with the United States Board of Tax Appeals on the basis of what appear to be immaterial issues, and the tax has not yet been assessed. When the United States Board of Tax Appeals renders its decision the proper tax will be assessed and interest computed from February 26, 1926, to the date of assessment.

Respectfully,

A. W. MELLON,
Secretary of the Treasury.

CONCLUSION

It is the opinion of this division that the refund allowed in case No. 1 is correct on the basis of the facts submitted. It is thought proper to bring out the inequity of the Government as to interest payments resulting in such cases from our present statutes.

Case No. 2

Code name: Roe & Roe (a partnership).

Figures involved: Additional interest allowance on prior credit, $12,697.61.

Subject: Interest.

DISCUSSION

The recommendation of the general counsel in this case is shown in Exhibit 2b, attached.

It appears that there was a certificate of overassessment issued to the partnership, Roe & Roe, for the taxable year 1917 in the amount of $60,014.96. Of this amount a certain portion was refunded to the partnership and a small amount abated. The balance, which amounted

to $28,476.84, was credited against the additional tax due from the partners, John Roe and James Roe, with their consent.

On the refund interest was paid from April 1, 1918, the date of overpayment, to December 3, 1925, the date of allowance of refund. There is no controversy about this interest on the amount refunded.

On the credit interest was originally paid from April 1, 1918, the date of overpayment, to June 15, 1918, the due date of the amount against which credit was taken. The taxpayer contended that this interest period was erroneous and that interest should be paid from April 1, 1918, the date of overpayment, to December 3, 1925, the date of allowance of the credit.

As the unit did not agree with the taxpayer's contention the taxpayer filed suit in the United States Court of Claims for payment of interest for the period stated.

The Attorney General, at the request of the general counsel, settled this case out of court by admitting liability for interest on the amounts credited the partners for the period April 1, 1918, to December 3, 1925, as claimed by the taxpayer.

The action taken in this case appears to be proper and in conformity with the law. It appears, however, that neither before nor after this action has the Bureau of Internal Revenue followed the precedent established. This is shown by the letter of the Treasury Department quoted in full below:

OCTOBER 12, 1927.

Mr. L. H. PARKER,
Chief Division of Investigation,
Joint Committee on Internal Revenue Taxation,
Room 321 A, House Office Building, City.

DEAR MR. PARKER: Reference is made to your letter of September 30, 1927, relative to the proposed payment of interest to Roe & Roe, as shown on schedule 2, in which you suggest that Mr. Sherwood's attention be drawn to the memorandum of the general counsel in this case and that you be informed whether this decision of the general counsel is being followed by his division.

You are advised that an agreement was reached between the taxpayer and the Attorney General in this case, as a result of which the taxpayer filed with the Attorney General in escrow a motion to dismiss its suit for interest in the United States Court of Claims. The Income Tax Unit was directed to reopen and allow the claim for interest. The memorandum of the general counsel in this case has not been adopted as a general policy.

Very truly yours, E. C. ALVORD,
Special Assistant to the Secretary of the Treasury.

It is not clear to this division why a policy which admittedly can not be sustained by legal action should be continued in force. The result of such procedure is to deny all taxpayers their statutory rights except those who file suit.

CONCLUSION

It appears that case No. 2 has been settled properly on the basis of the facts submitted. The question is raised, however, as to why the case should not be followed as a precedent for all taxpayers whose cases involve the same principle.

Case No. 3

Code name: The "A" Iron Products Co.

Figures involved:

Total of original assessment	$1,136,598.53
Final tax as now determined	1,074,175.29
Overassessment allowed	62,423.24
Amount refunded	62,423.24
Interest paid	17,975.33
Total allowance	80,398.57

Subject: Special assessment.

DISCUSSION

The recommendation of the general counsel to the commissioner in regard to this case will be found in Exhibit 3 of the appendix.

The "A" Iron Products Co. is by far the largest manufacturer of certain iron products in the United States. The company filed its original return for 1920, admitting a tax liability of $1,136,598.53. After a field examination, an additional tax liability of $37,992.52 was disclosed, but was not assessed, as the taxpayer filed a claim for special assessment for the year 1920 under the provisions of sections 327 and 328 of the revenue act of 1918. This claim was allowed and a refund of $62,423.24 resulted.

The refund in this case is due entirely to the application of the special assessment provisions above mentioned. The reason given for special assessment is that there has been "an understatement of assets" on the books of the taxpayer "due to the fact that large sums expended on additions, replacements, and other capital items were charged to expense in prior years."

It appears that this is a proper ground for special assessment when properly substantiated, and when it is not possible to actually restore such items to capital. It would appear more proper, however, in cases where the items could be identified to restore them to capital rather than to allow special assessment. Such facts can only be secured by the examination of the taxpayers' books, and this division therefore accepts the facts as stated in the general counsel's memorandum. It is certain that this ground for granting special assessment should be handled carefully for almost any company which has kept its books on a conservative basis can prove that many items should have been capitalized. For instance, it is believed the United States Steel Corporation could prove this fact.

Having admitted that special assessment is allowable, the bureau is next confronted with the problem of selecting proper comparatives. Inasmuch as the "A" Iron Products Co. is the largest company in this line of business, it has been impossible for the Income Tax Unit to follow its usual practice and select comparatives of the same size.

The following data from the files of the bureau shows the gross sales, net income, and percentage of profits tax to net income for the appellant company and the comparatives finally selected.

Extract from comparative data sheet

	Gross sales	Net income	Per cent profit tax to net income
Appellant	$12,444,841	$3,213,796	30.30
Comparative No. 1	2,008,030	425,629	21.70
Comparative No. 2	1,119,635	367,229	30.95
Comparative No. 3	936,160	176,236	26.19
Comparative No. 4	1,140,965	244,487	21.41
Comparative No. 5	1,711,404	291,237	26.79
Comparative No. 6	1,067,425	232,857	28.15
Average	1,330,603	289,613	25.79

Final profits tax, appellant	$836,733.45
Per cent of final tax to net income, appellant	26.04
Constructed invested capital, appellant	8,003,302.89

The above statistics show that the gross sales or net income of all six comparatives added together does not equal respectively the gross sales or net income of the appellant company. The comparatives chosen are therefore individually grossly disproportionate in size to the taxpayer company. The law, however, does not seem to specifically require the use of the same size companies as comparatives. This point, however, should be noted, as we shall see in a later case that the bureau insists on comparatives of the same size.

One of the practical points which stands out in this case is that special assessment is granted to a company which is by far the largest producer in its particular line. It is not apparent the Congress intended to give this relief to these large companies. If the principles established in this case are correct there seems to be no doubt that the United States Steel Corporation could be allowed special assessment, for this corporation was in the 80 per cent bracket in 1918 and had kept its books on a very conservative basis in regard to capitalization.

There are two other points which should be noted in this case:

In the first place, the reduction in tax through special assessment is about 9 per cent. It is not certain from the published regulations of the commissioner that this constitutes a "gross disproportion between the tax computed without benefit of this section and the tax computed by reference to representative corporations" as required by section 327 of the revenue act of 1918.

In the second place, the taxpayer had the benefit of substantial deductions for amortization and depletion. None of the comparative companies had these deductions showing that they were not "similarly circumstanced" in regard to their business. Amortization indicates the taxpayer had war contracts or contracts contributing to the prosecution of the war; depletion shows the taxpayer owned or operated mines.

CONCLUSION

This case is one of those not computed in accordance with the views of this division, but on the other hand it is admitted that there is nothing illegal in the determination made. It is admitted, also, that in the absence of definite rules, the specific application of the special assessment provision is largely discretionary with the commissioner.

Case No. 4

Code name: The "X" Tobacco Co.

Figures involved:

Total of original and additional assessments (1918 to 1921, inclusive)	$24,475,876.63
Previously refunded or credited	1,698,265.47
Balance	22,777,611.16
Final tax liability as determined	15,149,597.91
Overassessment allowed	7,628,013.25
Refunded	4,072,685.83
Credited	3,555,327.42
Overassessment	7,628,013.25
Interest	2,141,122.18
Total allowance	9,769,135.43

Subject: Special assessment.

DISCUSSION

On August 9, 1927, the following quoted letter was transmitted to the authorized representative of the Treasury Department. This letter sets forth the opinion of this division after a review of the case and is sufficient for the purposes of this report. It should be noted that actual names have been omitted in all cases and code numbers or letters substituted therefor.

AUGUST 9, 1927.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Washington, D. C.

Subject: Refund—"X" Tobacco Co.

MY DEAR MR. ALVORD: The Commissioner of Internal Revenue, on June 27, 1927, submitted to the chairman of this committee the facts in connection with the refund proposed to the "X" Tobacco Co., in accordance with H. R. 16462, requiring such report.

As per my general instructions covering all such cases I have made an investigation of the principal points at issue in this case, and not being in agreement with the findings of the bureau, the matter is referred to you with a request for a conference on this case on August 18 at 1.30 p. m., with such officers of the department as you may designate.

The figures involved in this case are as follows, covering the years 1918 to 1921, inclusive:

Total original and additional assessments	$24,475,876.63
Previously refunded and credited	1,698,265.47
Balance	22,777,611.16
Tax liability now determined	15,149,597.91
Overassessment proposed	7,628,013.25

Of this overassessment now proposed $4,072,685.83 is to be refunded and $3,555,327.42 is to be credited against 1923 taxes; in addition to this refund and credit, there will be due the taxpayer on this adjustment an interest payment of $2,141,122.18.

The determination of the final tax liability in this case has been arrived at by the application of the "special assessment provisions" sections 327 and 328 of the revenue acts of 1918 and 1921. The method employed is fully outlined in the recommendation of the general counsel to the Commissioner of Internal Revenue dated June 7, 1927, a copy of which is attached to this report. (See Exhibit A.")

The points in this case with which we take issue are as follows:

1. The holding that an abnormality exists in invested capital from the failure of the taxpayer to capitalize advertising expenses when at the same time it is held that "a satisfactory rule or formula" for capitalizing such expenses "has never been devised."

2. The determination of tax liability by "special assessment" by the use of only one comparative company.

3. The holding that legislative history is the controlling factor in granting special assessment in this case.

1. ABNORMALITY CLAIMED IN INVESTED CAPITAL

The general counsel sets forth in his memorandum (Exhibit "A") the total advertising and allied expenditures of the "X" Tobacco Co. from 1899 to 1921, which can be summarized as follows:

	Total advertising expenditures
1899 to 1911, inclusive	$7,062,542.51
1912 to 1917, inclusive	8,179,684.69
1918 to 1921, inclusive	22,060,884.79
Grand total	37,303,111.99

The general counsel states that "if a cause for special assessment exists it is (1) because the taxpayer employed in its business during the years under consideration valuable income-producing intangible assets which had been acquired through large expenditures in advertising but which are excluded from invested capital computed under section 326 of the revenue act of 1918, and (2) because of the legislative history of this particular case."

In our opinion there is nothing in section 326 which prohibits the capitalization of advertising expenses and its inclusion in paid-in surplus and in invested capital. However, the general counsel says that "a satisfactory rule or formula for obtaining the amount (of such expenditures) which should be apportioned to capital and the amount which should be apportioned to profit and loss has never been devised."

If this is the case, how can there be an abnormality in the invested capital of the "X" Tobacco Co. as required by section 327, through the failure to capitalize advertising expenses when there is no method in existence for this or any other company to capitalize such expenses? Noncapitalization of advertising expense must be the normal not the abnormal method of handling advertising expenditures.

Even if we grant that there is an abnormality on account of these advertising expenses, the relief afforded far exceeds what could be obtained under any method of capitalization of the advertising expenditures.

Suppose we allow advertising expenditures to be capitalized in full for all years, then the result would be approximately as follows:

Year	Approximate invested capital. All advertising capitalized	Statutory invested capital	Constructive invested capital as determined by special assessment
1918	$67,373,601	$52,131,384	$121,194,911
1919	61,022,116	65,215,929	144,437,216
1920	101,091,270	79,233,744	133,708,188
1921	109,965,289	81,406,904	169,999,324

From the above it can be seen that even if all advertising expenses were capitalized, the resulting invested capital would fall far short of that in fact allowed by the bureau under the special assessment provision. Not only that for the years 1918 to 1921 the taxpayers' income would be increased by the amount of such capitalized items, or the sum of $22,060,884.99.

It can readily be seen, therefore, that the taxpayer instead of suffering "an exceptional hardship" by the noncapitalization of such items as required by section 327, has in fact secured an advantage through the deduction of the items in full as an expense.

This method of allowing special assessment on account of an abnormality in not capitalizing expenditures, which expenditures are charged off in full as an expense for the taxable years in question, amounts to allowing such items both as an increase in capital and at the same time as a complete charge off from income. This method can not be approved of, and this case, if typical of the method employed by the special assessment section, becomes of general importance. To give the taxpayer this double advantage is obviously at variance with the whole intent of the law.

Probably the best method for the taxpayer would be to capitalize all advertising expenses up to January 1, 1918, and after that date charge same to expense. This method gives the following comparative results:

Year	Approximate invested capital. Advertising up to 1918 capitalized	Statutory invested capital	Constructive invested capital as determined by special assessment
1918	$67,373,607	$52,131,384	$121,194,911
1919	80,458,156	65,215,929	144,437,216
1920	94,475,971	79,233,744	133,708,188
1921	96,649,131	81,406,904	169,999,324

It will be seen from the above that even under this method, most advantageous to the taxpayer, the invested capital falls far below that determined under special assessment by the bureau.

It is our position that in any event the constructive invested capital determined under special assessment should not exceed the figures shown in column 1 of the above table, as such figures give effect to the full extent of the abnormality.

2. USE OF ONE COMPARATIVE

Section 328 provides that the tax determined under special assessment shall bear "the same ratio to the net income of the taxpayer for the taxable year, as the average tax of representative corporations engaged in a like or similar trade or business bears to their average net income."

Reference to any standard dictionary will show that it is impossible to obtain an average by the use of only one comparative company. This method appears at least technically illegal.

As we understand the position of the bureau, they adopt this method because there is only one company which they consider a proper comparative.

In the case of the refund recently allowed the "A" Iron Products Co. six comparatives were selected, all of whose net income added together did not equal the net income of the appellant company.

It is evident, therefore, that the same size of company is not required by the rules of the special-assessment section.

Data secured sometime ago from the special assessment section shows that there are many small tobacco companies who paid a higher excess-profits tax rate than is now found for the "X" Tobacco Co.

A summary of these comparatives follows:

1918

Name	Net income	Profits tax	Per cent profits tax to net income
Company No. 1	$29,531	$12,725	43.09
Company No. 2	245,293	101,659	41.44
Company No. 3	286,877	126,357	44.04
Company No. 4	188,774	64,474	34.15
Company No. 5	66,102	41,981	63.50
Company No. 6	39,344	14,938	37.96
Company No. 7	44,096	21,659	49.11

1918—Continued

Name	Net income	Profits tax	Per cent profits tax to net income
Company No. 8	$91,384	$32,278	35.32
Company No. 9	511,492	194,409	36.00
Company No. 10	39,114	19,327	49.92
Company No. 11	68,328	24,307	35.57
Company No. 12	60,053	22,149	36.88
Company No. 13	33,424	15,285	45.73
Company No. 14	61,069	27,614	45.21
Company No. 15	583,082	263,569	45.20
Total	2,347,953	982,931	41.86
1919			
Company No. 16	$28,548	$5,968	20.90
Company No. 17	43,528	6,499	14.93
Company No. 18	73,752	15,412	20.89
Company No. 19	78,759	11,376	14.44
Company No. 20	23,890	1,807	6.97
Company No. 21	54,477	9,941	18.24
Company No. 22	88,180	8,605	9.73
Company No. 23	98,896	8,168	8.25
Company No. 24	109,201	13,190	12.07
Company No. 25	294,610	51,301	17.48
Total	895,643	132,467	14.78
1920			
Company No. 26	$9,418	$692	7.34
Company No. 27	28,108	2,260	8.04
Company No. 28	117,012	14,936	12.76
Company No. 29	652,838	82,957	12.70
Company No. 30	34,189	3,192	9.33
Company No. 31	21,126	1,769	8.37
Company No. 32	32,765	5,137	15.67
Total	895,456	110,943	12.38

Of course, it can not be contended that all of the above comparatives are similarly circumstanced with the "X" Tobacco Co., the fact does remain that they are more or less in competition with it. A comparison of the average rates paid by these comparative companies against the rates now proposed for the "X" Tobacco Co. is as follows:

Year	Statutory rate "X" Tobacco Co.	Rate now allowed by bureau	Average rate shown by our comparatives
	Per cent	*Per cent*	*Per cent*
1918	50.37	26.09	41.86
1919	18.1	6.16	14.78
1920	11	4.67	12.38

There can be no doubt, therefore, that the "X" Tobacco Co. will under the proposed rates pay less than one-half of the profits-tax rate that many of its small competitors have been obliged to pay.

It would appear that if the bureau can disregard the size of comparatives in the case of the "A" Iron Products Co., that they could employ the same method in this case and use smaller comparatives.

Why a relief provision like special assessment should find a higher rate of tax for small companies than for large is not clear and does not seem to come within the intent of the Congress as expressed by the statute.

It is understood that rates have been determined under special assessment as follows for certain small tobacco companies:

APPELLANT COMPANY

1918

	Per cent
No. 1 Tobaccco Co. allowed profits-tax rate of	31.5
No. 2 Tobacco Co. allowed profits-tax rate of	38.03
No. 3 Tobacco Co. denied relief on rate of	40.96

1919

No. 4 Tobacco Co. allowed rate of	8.75
No. 5 Tobacco Co. denied relief on rate of	18.90

The memorandum of the general counsel goes into considerable detail as to the three other companies besides the "X" Tobacco Co., which dominate the tobacco business, namely:

The "M" Tobacco Co.

The "R" Tobacco Co.

The "S" Tobacco Co.

We have made a study of the statistics on those companies as published in Moody's Analysis of Industrials, which is interesting but too voluminous for reproduction here.

It might be mentioned, however, that if the "S" Tobacco Co. is granted special assessment on the argument advanced in this case they will of necessity also be compared with one company, the "R" Tobacco Co.

Now, the ground for special assessment in the "S" Tobacco Co. case is an excessive amount of borrowed capital. Yet the "R" Tobacco Co. appears to have a greater proportionate amount of borrowed capital than the "S" Tobacco Co. What will be done in such a situation is hard to see unless small comparatives are resorted to.

In regard to the "M" Tobacco Co. it is evident that the capital requirements of this company are quite different from the "X" Tobacco Co. The "M" Tobacco Co. manufactures large quantities of cigars and controls domestic and foreign subsidiaries which doubtless require more capital on the part of the parent company.

It might also be noted that all of the Big Four companies except the "X" Tobacco Co. have a large amount of bonded indebtedness showing an entirely different situation as to the capital necessary.

3. LEGISLATIVE HISTORY

It appears that the legislative history of this particular case is the controlling factor in allowing special assessment.

In other words, unless this company had been mentioned in the Finance Committee of the Senate as a typical case where special assessment was necessary, then this case would not have been allowed.

This means either that the bureau has failed to interpret this section of the act as intended by the Congress or that the act does not express the intent.

The fact remains that in this case, no other company similarly circumstanced with the "X" Tobacco Co. could get special assessment unless it too had been mentioned in a committee of the Congress or in that body itself.

We can not believe that the Congress intended to disregard in this way the fundamental principle underlying the excess-profits tax; namely, the taxation at special rates, of the profit accruing to corporations in excess of 8 per cent of its actual paid-in capital and paid-in surplus.

The fact remains that the other three of the "Big Four" tobacco companies had on the books large amounts of good will paid in for cash. These stockholders were entitled to their 8 per cent dividends before the payment of an excess-profits tax.

In the case of the "X" Tobacco Co., no such good will was paid for in cash, and it results that the stockholders could still get their 8 per cent dividend before being affected by the excess-profits tax.

We do not believe that the Congress in enacting sections 327 and 328 had in mind passing on the merits of all the facts in the "X" Tobacco Co. case, nor to hold the bureau to granting special assessment to this company, if they could not grant a similar relief to companies similarly situated which had not been mentioned by Members of the Congress.

When the 1918 revenue act first passed the Senate it included among the cases entitled to special assessment those which suffered a hardship "because of the time or manner of organization, or because the actual value of the assets on March 1, 1913, was substantially in excess of the amount at which such assets would be valued for the purpose of computing invested capital * * *."

This language was not in the House bill and was stricken out in conference. The general counsel's memorandum fails to show that the discussion in the Finance Committee was on the final revenue act as passed by both Houses, or merely in the act as first passed by the Senate.

The "X" Tobacco Co. case is clearly one where the time and manner of organization is substantially different from the other members of the "Big Four" group. But this ground for special assessment was clearly eliminated in the final bill as passed by both Houses.

A discussion of the above points is requested in conference, in order that this committee may fulfill the obligation laid on it by H. R. 16462, the urgent deficiency bill.

Very truly yours,

L. H. PARKER,
Chief Division of Investigation.

Following the above letter, conference was had with the party designated by the Treasury Department and the various issues raised were discussed. Information was given that the use of one comparative had been found legal after investigation by the general counsel's office. The representative of the Treasury Department took the position that the determination was the most favorable to be had in view of the peculiar circumstances of the case.

This division concluded that its duty had been performed by calling the main issues to the attention of the department.

CONCLUSION

This case is one where, in the opinion of this division, special assessment should not have been allowed. It is conceded, however, that it was within the discretionary power of the commissioner to grant special assessment in this case. This is a good sample of the extreme difficulty in the determination of tax under these provisions, and the magnitude of this overassessment shows its very great importance.

Case No. 5

Code name: The "B" Rubber Co.
Figures involved:

Original assessment	$614,768.27
Final tax liability	476,340.02
Overassessment	138,428.25
Refunded	138,428.25
Interest	51,072.44
Total allowance	189,500.69

Subject: Special assessment.

DISCUSSION

The refund in this case is due to the application of the special-assessment provisions of the 1918 revenue act to the determination of tax for the year 1919.

The grounds for special assessment are two in number and both appear proper. These grounds are stated by the general counsel as follows:

1. "Where there are excluded from invested capital computed under section 326, intangible assets of recognized value and substantial in amount, built up or developed by the taxpayer."

2. "Borrowed capital": During the taxable year, the company had $1,172,000 in borrowed capital, or approximately one-half of the amount of the statutory invested capital.

In regard to the selection of comparatives, the report of the corporation auditor for this committee states as follows:

"It is the practice of the unit in a consolidated case where the companies are engaged in a somewhat different line of business to select comparatives representative of each industry in which the class of products fall. This has been done in the above-named taxpayer's case as will be noted by reference to the data sheet attached. Some of the comparatives represent manufacture of hard rubber while Company No. 2 is engaged in the manufacture of asbestos. After going over in detail with the auditor the data sheet attached hereto and examining the cases selected it would appear that the comparatives used are the best that could be obtained."

CONCLUSION

This division believes that the determination in this case is proper and in conformity with the law. It is submitted in order to make plain that certain cases clearly fall within the intent of Congress in enacting the special-assessment provisions.

Case No. 6

Code name: The Produce Co.
Figures involved:

Total original assessment (1922 and 1923)	$112,000.85
Final tax determined	None.
Overassessment	112,000.85
Refunded	112,000.85
Interest	19,524.35
Total allowance	131,525.20

Subject: Depreciation—Discussion.

The recommendation of the general counsel to the commissioner is shown in Exhibit 4 of the appendix.

It appears that on the original returns of the taxpayer for the years 1922 and 1923 depreciation was not computed on a proper basis and a new basis was set up on amended returns. The amounts originally claimed for depreciation and the amounts as revised on the amended returns are shown below:

Year	Depreciation taken on original returns	Depreciation claimed on amended returns
1922	$238,423.98	$627,082.56
1923	241,651.47	639,926.19

The bureau found the depreciation claimed on the amended returns proper.

The determination of depreciation is fundamentally a question of fact. This division could not properly comment on the determination of fact without a field examination. In view of the large change made in the depreciation, the rates allowed were examined and found to be as follows:

	Per cent
Buildings	3
Equipment	5
Machinery	5

These rates appear reasonable. It should be noted, however, that repairs were deducted from income in these years as shown below:

1922	$726,640.10
1923	938,575.72

How far such repairs had the effect of increasing the life of the plant is not determinate from the record. In fact, this is a general problem which has never been satisfactorily solved, but which should be studied in view of the very great deductions taken in arriving at net taxable income on account of depreciation and repairs.

CONCLUSIONS

It is conceded that the allowance made in this case is proper on the basis of the facts shown in the record and accepted by the bureau. The importance of depreciation deductions should be specially noted.

Case No. 7

Code name: The "C" Oil Co.
Figures involved:

Total original and additional assessments (1918 and 1919)	$2,585,489.33
Final tax determined	1,885,482.59
Overassessment	700,006.74
Refunded	600,006.74
Credited	100,000.00
Interest	255,440.00
Total allowance	955,446.74

Subject: Depletion.

DISCUSSION

The recommendation of the general counsel to the commissioner in regard to this case is shown in Exhibit 5 of the appendix.

The principal issue in this case is the determination of the depletion allowance on oil wells. The depletion allowances claimed and allowed are shown in the following table:

Year	Oil depletion claimed by taxpayer	Oil depletion originally allowed by bureau	Oil depletion finally allowed
1918	$5,515,464.07	$2,779,079.91	$4,392,782.54
1919	37,214,875.18	9,744,761.59	11,033,320.11

The procedure in this case was unusual. The taxpayer filed suit in the Court of Claims for about $2,000,000. The case was compromised out of court for $700,000. Then a valuation was set up by the engineering division which would make the statutory tax agree with the amount of the compromise.

Such a method of fixing the tax and then working back to a valuation from the tax, is, in general, condemned. However, investigation showed that the valuation made was based on reasonable and proper factors and that the engineer making the valuation was satisfied that the value found was conservative.

CONCLUSION

It is probable the refund made in this case was for the best interests of the Government and that a larger refund would have resulted if the case had been carried through the court. The fact must be faced, however, that as long as the tax is based in these cases on the determination of valuations which vary by as much as 400 per cent according to the views of different experts, then just so long will compromises be necessary in these cases.

Case No. 8

Code name: "Standard" Tobacco Co.
Figures involved:

Total of original and additional assessments (1912 to 1918)	$13,800,517.37
Final tax determined	6,179,630.13
Overassessment	7,620,887.24
Refunded	1,964,729.02
Credited	24,625.91
Abated	5,631,532.31
Total	7,620,887.24
Interest	923,817.38
Total allowance	8,544,704.62

Subject: Invested capital.

DISCUSSION

The principal reason for the overassessment in this case is the adjustment of invested capital. The case is very voluminous and has been carefully reviewed; it is believed that on the basis of the facts admitted by the bureau the adjustment is proper.

The increase in invested capital amounting to approximately $36,000,000 is due largely to the valuation of tangibles and intangibles of predecessor companies acquired by the taxpayer at the time of incorporation. These valuations were based on certain facts which could only be verified by a field investigation. The legal action of the bureau appears to have been proper.

CONCLUSION

This case is illustrative of the great difficulty which is experienced with invested capital computations. A full discussion of all the various points involved would be too voluminous for the purposes of this report.

It is pointed out that one of the principal troubles is due once more to questions of judgment in the matter of valuations.

Case No. 9

Code name: The City Trust Co.

Figures involved:

Total of original and additional assessments (1917 to 1920)	$819,223.95
Final tax determined	593,465.56
Overassessment	225,758.39
Refunded	225,758.39
Interest	49,860.77
Total allowance	275,619.16

Subject: Red Cross contribution.

DISCUSSION

The principal reason for the refund in this case is the deduction from income of State franchise and Federal capital-stock tax accrued. The only point, however, which will be discussed is the allowance as a necessary expense deductible from income of a contribution to the American Red Cross in 1917.

The recommendtion of the general council to the commissioner states in part as follows:

"The first item is the allowance of a Red Cross donation in the amount of $90,100. During this year the taxpayer made a contribution to the American Red Cross in the amount of $100,100. The taxpayer contends that it would have in any event contributed to the Red Cross during this year but would not have given in excess of $10,000, except for the reason that the taxpayer was the principal depositary of the American Red Cross and had been such for some time prior to 1917. The average balance of the deposit of the American Red Cross with the taxpayer for the period from June, 1917, to June, 1918, was $7,446,000. The bank paid interest at the rate of 3 per cent on this deposit to secure a much higher rate of return through reinvestment.

It was held in Treasury Decision 2847 that corporations are not entitled to deduct from gross income the amount of contributions to religious, charitable, scientific, or educational corporations or associations even though such contributions may be made to the Red Cross or other war activities. The taxpayer takes the position, however, that the amount of $90,100, being the amount of its donation in excess of a fair ordinary contribution, should not be classified as a contribution but as an ordinary and necessary business expense. The taxpayer relies upon the provisions of article 562 of Regulations 45, providing that "donations which ultimately represent a consideration for a benefit flowing directly to the corporation as an incident of its business will be deductions from gross income." In appeal of Anniston City Land Co. (2 B. T. A. 526) a contribution by a corporation engaged in the business of land sales, made to the Chamber of Commerce of Anniston, was allowed as a deduction. The board said, "It is difficult to imagine an expenditure which would have stimulated demand as did this contribution. Such a contribution has, in a direct sense, a reasonable relation to the taxpayer's business." In the appeal of Citizens Trust Co. of Utica (2 B. T. A. 1239), a contribution by the taxpayer to the Oneida County Farm Bureau was allowed as a deduction upon the finding that it was an ordinary and necessary expense of the business. The facts herein bring the case within the provisions of the regulations and the application thereof made by the Board of Tax Appeals. Accordingly the deduction of $90,100 may be allowed."

This division was not convinced by the above reasoning and drew this item to the attention of the bureau. It is believed that the bureau did not change their position.

Treasury Decision No. 2847 states in part as follows:

"The Attorney General, in an opinion dated May 19, 1919, states the view that ordinary and necessary expenses contemplated by paragraph 1 of sections 214 and 234 were not intended to include all necessary expenses, because the two immediately succeeding paragraphs provide for deducting interest and taxes, both of which are necessary expenses; also the provision in regard to allowance for salaries, compensation, rentals, etc., indicates that all of the expenses which are contemplated under the terms used in paragraph 1 of these sections are expenses incurred directly in the maintenance and operation of the business, and not all those which may be beneficial and even necessary in the broader sense.

"In addition to the above considerations and to the fact that there is express provision for deducting contributions or gifts in the case of individuals, which is wanting in the section providing for deductions to be made by corporations, reference to the legislative history of the revenue act of 1918 (CONGRESSIONAL RECORD for September 17, 1918) shows that an amendment providing that corporations might make deductions of contributions or gifts, as in the case of individuals, came to a vote and was defeated, the principal reason assigned in the debate being that it would be dangerous to authorize directors to be generous with the money of their stockholders even for such laudable purposes.

"Corporations are therefore not entitled to deduct from their gross income for the purposes of the income tax the amount of contributions made to religious, charitable, scientific, or educational corporations or associations, even though such contributions are made to the Red Cross or other war activities."

It can be seen from the above quotation that under published decisions contributions by corporations to the Red Cross are not deductible from income even though such contributions "may be beneficial and even necessary in the broader sense."

CONCLUSION

This is a case where in the opinion of this division one of the issues has been decided in a manner not in accordance with existing decisions. It appears that the legal advice of the bureau is contrary to our opinion.

Case No. 10

Code name: The "D" Railroad Co.

Figures involved:

Total and additional assessments (1909 to 1916)	$112,421.33
Final tax determined	54,959.49
Total overassessment	57,461.84
Previously allowed	627.79
Overassessment (present)	56,834.05
Refunded	56,834.05
Interest	32,550.89
Total allowance	89,384.94

Subject: Affiliation.

DISCUSSION

The "D" Railroad Co. was affiliated with the "Universal" Steel Co. for 1917 and subsequent years. The refund allowed in this case is not due primarily to affiliation but nevertheless this question is involved. The refund is made as a result of the application of section 284 (c) of the revenue act of 1926, which provides as follows:

"If the invested capital of a taxpayer is decreased by the commissioner, and such decrease is due to the fact that the taxpayer failed to take adequate deductions in previous years, with the result that there has been an overpayment of income, war-profits, or excess-profits taxes in any previous year or years, then the amount of such overpayment shall be credited or refunded, without the filing of a claim therefor, notwithstanding the period of limitation provided for in subdivision (b) or (g) has expired."

The only question that will be discussed in this case is the question which has caused much of the trouble in the case of the consolidated returns of affiliated companies, and which can be stated as follows:

Does the consolidated-returns provision create a new taxable status that is "one economic unit" for tax purposes, or does each corporation in the affiliated group retain its individual entity as a taxpayer?

The United States Board of Tax Appeals states as follows in the Farmers Deposit National Bank case (5 B. T. A. 527):

"On the other hand, it said, plainly enough we think, in section 240 (a) of the revenue act of 1918, that the generally recognized principle of corporate identity was to be overridden for the purpose of the income and profits taxes; that the separate existences of the affiliated companies ceased for tax purposes. It created out of two or more affiliated companies, otherwise having separate identities, a new tax status; and when it did so Congress intended that the group should have the attributes of a single taxpayer. And where, in other sections of the statute, Congress speaks of corporations as individual taxpayers, it means as to the sections dealing with consolidated units to treat the consolidated unit as a single corporation."

If this view is correct and the opinion seems decidedly broad, then it does not appear that in the case of the "D" Railroad Co. its taxes for 1909 to 1916 should be effected by adjustments in the invested capital of an affiliated group which had a "new tax status" and was treated as a "single corporation."

However, Mr. Nash, assistant to the commissioner, states in a letter to this division, as follows:

"'Taxpayer' is defined in section 2 (a) (9), Part IV of the revenue act of 1926 as 'any person subject to a tax imposed by this act,' while 'person' is defined in section 2 (a) (1), Part IV of the same act as 'an individual, a trust or estate, a partnership, or a corporation.' When corporations become affiliated for tax purposes under the provisions of section 240 of the various revenue acts they are required to file a consolidated return on Form 1120 and in addition separate returns on Form 1122. Each affiliated company is specifically made subject to tax under the provisions of section 240 and being subject to tax must be regarded as a taxpayer within the meaning of section 2 (a) (9), supra."

CONCLUSION

The opinion of this division is in agreement with the statement of Mr. Nash on the point discussed. It is important to note that the application of the so-called "economic unity theory" as advanced by the board is in conflict with the "separate entity theory" long practiced by the bureau and it is one of the factors in the difficulty experienced in the administration of the consolidated-returns provision.

Case No. 11

Code name: Estate of John Moe.

Figures involved:	
Total tax paid	$833,018.79
Final tax determined	679,085.50
Amount of refund	143,933.29
Interest	26,770.93
Total allowance	170,704.22

Subject: Estate tax.

DISCUSSION

The recommendation of the general counsel to the commissioner in regard to the case is shown in Exhibit 6 of the appendix.

It appears that John Moe owned at the time of his death an eight-ninths interest in John Moe & Co., a partnership. This partnership held bonds (or notes) of the "X" Motor Truck Co., having a book cost of $1,382,173.43.

John Moe died on May 31, 1922. At this time the "X" Motor Truck Co. was in operation but was losing money. In December, 1922, the "X" Motor Truck Co. went into the hands of a receiver.

The estate tax division valued the bonds (or notes) above referred to at $750,000 in their original determination of the tax.

The estate in support of a claim for refund, made affidavit that the bonds (or notes) had been sold during liquidation by court order for $1,000. This affidavit was accepted by the estate tax division and this decrease in value from $750,000 to $1,000 is the principal cause for the refund in this case.

An investigation made by this office showed that the assets of the "X" Motor Truck Co. were sold at receiver's sale on November 23, 1925.

It appeared probable that a certain beneficiary of the estate bought the bonds referred to for $1,000, and that on sale of assets such beneficiary might have received a substantial amount for same. The Treasury Department agreed to check this point up in the field to see that any difference between the $1,000 and the amount received should be included in taxable income.

CONCLUSION

This case is illustrative of the difficulty often encountered in valuation of securities for estate-tax purposes.

Case No. 12

Code name: "X" Leather Co.

Figures involved:	
Total original and additional assessments (1919)	$3,520,486.60
Final tax determined	3,173,673.24
Overassessment	346,813.36
Refund	346,813.36
Interest	140,858.48
Total allowance	487,671.84

Subject: Inventory adjustments.

DISCUSSION

The refund in this case is due principally to the reduction in inventory as of December 31, 1919. The taxpayer on this date showed an inventory of approximately $75,000,000, of which $39,577,036.68 consisted of hides, mostly purchased in 1918 at war prices. The return for the taxable year 1919 was made on the basis of an inventory at cost. The taxpayer later filed claim for refund, alleging that since its returns were made on the basis of "cost" or "market" whichever is lower as to inventories, it was entitled to have the inventory of December 31, 1919, revised on the basis of market, for the reason that market was lower than cost.

The bureau's explanation of its action is shown in Exhibit 7. This division made an examination of this case in the files of the bureau. Its findings are shown in Exhibit 8 of this report.

CONCLUSION

The principle applied in revising the inventory is in accord with the commissioner's regulations. The prices adopted by the bureau were accepted without check. The case is illustrative of many refunds resulting from the revaluation of inventories at market value.

Case No. 13

Code name: The "T" Typewriter Co.

Figures involved:	
Total original and additional assessments (1918 to 1920)	$167,426.79
Final tax determined	66,462.59
Overassessment	100,964.20
Previously allowed	4,466.73
Present overassessment	96,497.47
Refunded	96,497.47
Interest	34,606.65
Total allowance	131,104.12

Subject: Installment sales.

DISCUSSION

Considerable discussion has been had in connection with the so-called double-taxation feature of the present regulations applying to the installment sales method of reporting income in the year or years of transition from the accrual basis.

This actual case where the taxpayer originally reported on the accrual basis and subsequently changed to the installment basis shows that considerable benefit is secured by this change, even if the cash received in the current year on account of sales made in prior years is included in income. The latter basis was the method used in this case, the figures for which are shown below:

Year	Net income		Decrease in taxable income by change
	Accrual basis	Installment basis	
1918	$263,340.11	$253,471.90	$9,868.21
1919	497,854.20	135,336.70	362,517.50
1920	272,706.67	151,211.10	121,495.57

The above adjustments in net income were by far the principal changes made in these returns and are therefore the controlling factor in the allowance of the refund of $96,497.47 plus interest of $34,606.65. This large refund is allowable even under the double taxation method; if the method outlined in the Treasury decision of October 20, 1920, had been used the refund would have been still larger.

CONCLUSION

This case appears properly determined. It is presented as illustrative of the effect of changing from the accrual to the installment basis.

MISCELLANEOUS REMARKS

The study of individual cases has been very valuable to this division as a means of determining in a practical and concrete manner the operation and effect of our revenue acts.

The search for the principal points at issue in these cases has indicated certain provisions of the act which are troublesome. It has become apparent that wherever valuations are necessary difficulty follows. The determinations of facts as of dates far in the past is also a source of trouble.

Numerous cases in addition to these described could be listed but it appeared that those chosen are sufficient for the general purposes of this report. The complete file on the 323 cases submitted is in the hands of this division and open to the inspection of the members of the joint committee.

CONCLUSION

While certain points in connection with the refunds have been frankly criticized in this report it must be admitted that the great majority of the refunds have been correctly determined on the basis of the facts submitted.

Even in the relatively few doubtful cases it is also conceded that there are ample grounds for a difference of opinion.

The examination of these refunds has been instructive in connection with the more constructive work of this division provided for in section 1203 of the revenue act of 1926.

Respectfully submitted.

L. H. PARKER,
Chief Division of Investigation.

DECEMBER 8, 1927.

BUREAU OF INTERNAL REVENUE,
OFFICE OF THE GENERAL COUNSEL,
March 12, 1927.

In re John Doe & Co. (Inc.).

MR. COMMISSIONER: A certificate of overassessment in favor of the above-named company for the period February 25 to June 30, 1920, has been submitted for approval in the amount of $116,260.83.

The taxpayer filed its original return for the fiscal year July 1, 1919, to June 30, 1920. This return indicated a taxable income of $346,408.44. From the information contained in the return and in briefs filed by the taxpayer the bureau has found that there was no attempt to incorporate prior to February 25, 1920, and that prior to this date there was no user of corporate powers and that the taxpayer did not exist as a de facto corporation prior to that date. The bureau has, therefore, held that the taxpayer should file a return from February 25 to June 30, 1920. Inasmuch as the income for the entire fiscal year was included on the return, the ruling as to effective date of corporate organization excludes the income earned prior to February 25. This amount of income is approximately $226,408. Mr. Doe has been taxed on this income individually.

The income shown by the return has been reduced by an adjustment to closing inventory in the amount of $111,926.34 by an increase in purchase of $9,183.28 and by the allowance of accrued State taxes of $15,649.88. As above stated, the taxpayer benefits in these reductions

in income to the extent which the portion of the year in which it was in existence bears to the total fiscal year.

A field investigation has been made by the bureau and after a careful review of the records of the goods on hand June 30, 1920, and of the market price of the inventory items a valuation resulting in the reduced inventory figure has been determined. Reference was made by the field examiner to actual sales of goods immediately after the inventory date to substantiate the market value. It is noted that the market price of the inventory items actually fell below the figure used in the preparation of the inventory valuation approved by the unit. It is believed that the reduction in the inventory to the amount found by the unit to be the true market price at the date the inventory was taken is a proper adjustment under the provisions of article 1584 of Regulations 62, and it is, therefore, recommended that this action be approved.

The adjustment to purchases is a net adjustment on account of outstanding purchase contracts which the taxpayer claims to have been filled prior to the close of the taxable year so as to make it the owner of the goods. Due to the fall in market price, this results in a claimed loss for the taxable year 1920. The revenue agent has rejected the taxpayer's claim in so far as it relates to goods which were billed and/or delivered after June 30, 1920. It is believed that this action is proper in that there was no appropriation of goods to the contract by the seller and hence the taxpayer was not vested with title to the goods prior to the close of the taxable year. The agent has, however, allowed to be included in inventory goods actually invoiced and billed to the taxpayer prior to June 30. The goods in question were actually received by the taxpayer prior to June 30 and returned for further processing as they did not come up to contract specifications and were in specie returned to the taxpayer at a later date. The inclusion of these goods in inventory due to the decline in market results in a deduction in 1920 income of $9,483.28.

The books of the taxpayer were on an accrual basis, and a surplus reserve was set aside to take care of the State taxes applicable to the period ended June 30, 1920, which taxes accrued before the end of that period. It is believed that those taxes constituted an allowable deduction from income and that the amended income found by the bureau is correct.

In view of the foregoing it is believed that the audit resulting in the present certificate of overassessment is correct, and it is recommended that the overassessment be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL OF INTERNAL REVENUE,
August 5, 1927.

In re Roe & Roe.

Mr. COMMISSIONER: A notice of interest allowance in the amount of $12,697.61 has been prepared in favor of the above-named taxpayer for the calendar year 1917.

A certificate of overassessment of the taxable year 1917 in the amount of $60,014.94 was allowed and entered on Schedule It–A–17461, under dated of December 2, 1925, and a check, voucher No. 3935, was mailed to the taxpayer under date of April 16, 1926, covering $29,960.23, the refund portion of the overassessment. Of the amount of tax represented by the overassessment, $1,577.87 was abated, $14,291.41 was credited to unpaid taxes of John Roe, while $14,185.43 was credited to unpaid taxes of James Roe. The taxpayer has agreed to these credits.

At the time of making these adjustments interest in the amount of $14,135.68 was computed from the dates of payment of the tax (a) on the amount refunded to the date of the schedule on which the overassessment was allowed, or (b) on the amount credited to the due date of the outstanding tax to which credit was applied, as prescribed by section 1116 of the revenue act of 1926, as follows:

Amount refunded	Amount credited	Interest allowed		Interest
		From—	To—	
$29,960.23		Apr. 1, 1918	Dec. 3, 1925	$13,791.55
	$27,974.74	do	June 15, 1918	344.13

No interest was computed on the balance credited, $502.14, as the date of payment thereof was subsequent to due date of the tax to which credit was applied.

Subsequently, the taxpayer filed suit in the United States Court of Claims for additional interest on the amounts credited to James Roe and John Roe, alleging that the interest on the amounts credited should have been computed from the date of payment of the tax to the date of the allowance of the credit.

Under date of May 4, 1927, the Attorney General was informed that upon reconsideration of the case this office takes the view that, since the partnership was a taxable entity distinct from the partners, there was no statutory authority for crediting the overassessment due the partnership against the deficiencies due from the individual partners. The credit was made solely under the consent filed by the partnership and the partners. In substance, the crediting of this overassessment by consent or contract against the individual partner's liability was a refund to the partnership paid to the persons designated by the partnership to receive it. This crediting being in substance a refund, interest should be computed in accordance with the statutory provisions relating to interest on refunds, and, accordingly, interest on the entire amount of the overassessment should be computed in accordance with the provisions of the revenue act of 1926, relating to refunds, since the refund in this case was paid after the passage of that act.

The Attorney General was requested if after considering the matter he agreed with the view taken by this office that he notify claimant's counsel that upon filing with him in escrow of a motion to dismiss the case would be continued by consent, the administrative file would be returned to the Income Tax Unit with direction to reopen the claim and to allow interest on the amount credited, and that upon the allowance and payment of the interest the motion to dismiss the case would be filed.

Under date of June 22, 1927, the Attorney General informed this office that the attorneys for the plaintiff had filed with him in escrow a motion to dismiss when settlement should be made.

Accordingly, a recomputation of the interest payable has been made, resulting in allowing interest on $57,934.93 from April 1, 1918, the date of payment of the tax to December 3, 1925, the date of allowance of the refund or credit, and on $502.14 from June 21, 1920, the date of payment of the tax to December 3, 1925, the date of the allowance of the refund or credit, making the total interest due $26,833.29, and as interest in the amount of $14,135.68 had previously been paid there remains the difference, or $12,697.61 additional interest to be paid.

Accordingly, it is recommended that the above-mentioned payment of interest be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved August 8, 1927.

D. H. BLAIR,
Commissioner of Internal Revenue.

In re The "A" Iron Products Co.

Mr. COMMISSIONER: A certificate of overassessment for the year 1920 in favor of the above-named company in the amount of $62,423.24 has been submitted for approval.

The unit has made a field examination of the taxpayer's records and has found an amended taxable income and statutory invested capital which result in an additional tax liability of $37,992.52. This determination of income and capital has been acquiesced in by the taxpayer. A claim was filed, however, for assessment under the provisions of sections 327 and 328 of the revenue act of 1918, and the present certificate of overassessment reduces the tax liability on a statutory basis by $100,415.76 to result in the proposed overassessment of $62,423.24.

The taxpayer lists several grounds for special assessment, among them being low officer's salaries, appreciation in value of assets, built-up good will not reflected in statutory capital, and understatement of assets on its books due to the fact that large sums expended on additions, replacements, and other capital items were charged to expense in prior years. The first three grounds stated by the taxpayer do not constitute a basis for the allowance of special assessment. The unit has found, however, from a review of the taxpayer's records for later years that large expenditures were made for additions and capital items. These expenditures were not capitalized but were charged to expense, and therefore the book value of assets is understated and the statutory capital can not be satisfactorily determined. An abnormality results due to this condition under the provisions of section 327 (a) of the revenue act of 1918.

In the preparation of a data sheet the unit has reviewed all of the concerns similarly circumstanced with respect to gross income, net income, profits per unit of business transacted, and capital employed, and has selected concerns engaged in a like or similar trade or business as that conducted by the taxpayer. It is believed that the present data sheet used in the computation of tax liability resulting in the proposed certificate of overassessment is the best that can be prepared and lists concerns selected in accordance with the provisions of section 328 of the revenue act of 1918.

In view of the foregoing, it is believed that the computation of income and tax liability resulting in the present certificate of overassessment is in accordance with the provisions of the revenue act of 1918, and it is therefore recommended that the certificate of overassessment be approved.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL OF INTERNAL REVENUE,
April 8, 1927.

In re The Produce Co.

Mr. COMMISSIONER: Certificates of overassessment of corporation income taxes have been prepared in favor of the above-named company for the years 1922 and 1923 in the amounts of $37,533.74 and $74,467.11, respectively.

The above overassessments propose to refund the entire amount of tax assessed against the above-named company for the years 1922 and 1923. The returns originally filed show taxable income for 1922 and 1923 of $300,269.91 and $595,736.85. These original returns indicated that deductions had been taken for depreciation in the amounts of $238,423.98 and $241,651.47 for the years 1922 and 1923, respectively.

In the bureau audit of the case for the years 1917 to 1921, inclusive, segregation was made of the taxpayer's assets in the various classes and depreciation was allowed on the segregated costs of assets on the basis of the estimated life of each type of asset. The depreciation claimed by the taxpayer in its original returns was arbitrary and not based on the actual loss sustained from that source during the years in question.

Amended returns were filed by the taxpayer for the years 1922 and 1923 following the bureau audit for prior years and claiming depreciation on the same basis as had been allowed for the years 1917 to 1921, inclusive. The depreciation claimed in the amended returns for 1922 and 1923, respectively, was $627,082.56 and $639,926.19. In view of the fact that the amended returns reflected the actual depreciation sustained by the taxpayer and the reduction of income by this increased depreciation resulted in no income subject to tax, the present action in refunding the entire amount assessed on the original returns appears to be proper.

In addition to the foregoing it is noted that the audit of the return for the year 1921 indicates a statutory net loss of $988,382.41. The field examination of the case indicates that losses were sustained also for the years 1922, 1924, 1925, and 1926, and that the income for the year 1923 is less than $10,000. In view of the provisions of section 204 of the revenue act of 1921, the application of the net loss against the income for the year 1923 results in a net loss for the taxpayer for all of the years, 1921 to 1926, inclusive.

In view of the foregoing, it is recommended that the overassessments indicated above be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved April 11, 1927.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL OF INTERNAL REVENUE,
March 26, 1927.

In re The "C" Oil Co.

Mr. COMMISSIONER: There have been prepared two certificates of overassessment in favor of the above-named taxpayer, one for 1918 in the amount of $293,144.84 and the other for 1919 in the amount of $406,861.90, corporation income and profits taxes. This corporation was affiliated with two small subsidiaries.

For 1918 the taxpayer filed a return reflecting a net income of $5,981,229.63 and invested capital of $7,003,437.45, and upon the resulting tax computation an assessment was made of $1,880,542.40. In this return a deduction was claimed for depletion of $2,161,133.71. Subsequently, on September 22, 1921, an amended return was filed for 1918 claiming a depletion deduction of $5,515,464.07 on oil and $63,365.62 on coal production and a consolidated net income of $1,507,421.92.

For 1919 a return was filed reflecting a net loss of $25,731,567.42, so that no tax was then assessed. This return claimed a depletion deduction of $37,733,986.23, mostly on oil and gas produced, the balance on coal. An amended return, filed September 22, 1921, showed a net loss of $25,104,907.78, and in this return the taxpayer claimed an allowance of oil depletion of $37,214,875.18, and depletion of $42,012.59 on coal.

On September 22, 1921, the taxpayer also filed a refund claim asking return of $2,494,751.16, made up of $1,894,751.16 for 1918, and $600,000 for 1919. This claim was based upon the amended returns then filed, and a request for application of the 1919 net loss against the 1918 net income, under section 204 (b) of the revenue act of 1918. The Income Tax Unit thereafter made an audit of the returns for 1917, 1918, and 1919, set out in bureau letters to the taxpayer on December 4, 1922. This audit disclosed an overassessment of $119,842.15 for 1917, which was proposed to be credited against additional taxes proposed, for 1918 in the amount of $154,670.47, and for 1919 in the amount of $550,276.46. These two amounts were assessed in December, 1922, and the refund claim for 1918 and 1919 accordingly rejected. Of the 1918 depletion of $5,515,464.07 deducted for oil, the bureau disallowed $2,736,384.16, and also disallowed $26,355.64 depletion on coal. The consolidated net income was set up as $4,269,046.03, and special assessment, under section 328 of the revenue act of 1918, was allowed, with an average profits tax rate of 40.62 per cent. The bureau audit also disallowed $27,470,113.59 depletion claimed for 1919 on oil, and $17,474.31 on coal, and there resulted a consolidated net income of $2,404,387.10.

Early in April, 1923, the taxpayer filed suit in the Court of Claims, asking recovery of $2,614,593.31 (with interest), which included the amount of the refund claim for 1918 and 1919, and the credit of $119,842.15 for 1917. The suit was based primarily on claims for additional depletion allowances through revaluation of the producing properties and establishment of increased discovery values. Sundry objections were raised, also the adjustments made by the bureau to the 1919 invested capital as returned. Testimony was taken in said suit, and thereafter, at the suggestion of the taxpayer, proposal was made to settle the case through agreement on the depletion allowance. The bureau has agreed to allow additional depletion on (oil) discovery values, in the amount of $613,702.63, for 1918, and the revised net income is $3,655,343.40. The tax computation, upon this net income, using the special assessment rate of 40.6214 per cent for determining the profits tax, discloses a total tax liability for 1918 of $1,742,068.03, as shown upon the certificate of overassessment.

For 1919, the audit of December 4, 1922, reduced the invested capital returned, from $12,357,869.09 to $10,745,115.44, chiefly through revision of the adjustments for Federal taxes in prior years, dividends paid within the current year, discount on capital stock issued for sundry tangible assets, sustained depreciation and depletion reserves, and inadmissible assets. The bureau has agreed to allow additional depletion, on discovery values, of $1,288,558.52, resulting in a net income of $1,115,828.58. By computing the tax thereon, without changing the invested capital set up in the letter of December 4, 1922, for profits-tax purposes, the corrected tax for 1919 is shown as $143,414.56, as indicated in the certificate of overassessment.

The revised depletion allowances having been computed by engineers of the bureau, and accepted by the taxpayer as a compromise basis for dismissal of its suit for refund of 1918 and 1919 taxes, it is recommended that the overassessments be allowed. Attention is called to the fact that $100,000 of the overassessment of $293,144.84 for 1918 was refunded to the taxpayer out of a prior appropriation, on December 7, 1926, and payment for 1918 to this taxpayer under schedule No. 22840 will be reduced by that amount.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL,
BUREAU OF INTERNAL REVENUE,
March 24, 1927.

In re Estate of John Moe.

Mr. COMMISSIONER: The claims for refund filed on behalf of the above-named estate on account of estate taxes paid have been prepared for allowance in the sums of $10,777.73 and $133,155.56.

The first claim was predicated upon an additional deduction sought on account of executors' commissions in the sum of $53,888.67. These commissions were approved by the court and paid and, therefore, constitute a proper deduction in determining the value of the net estate.

The second claim was based upon an additional deduction sought on account of debts of decedent. This indebtedness represents the decendent's liability as a member of the firm of John Moe & Co. In determining the decedent's liability under the former review of the return, there was included in the assets of the partnership bonds of the "X" Motor Truck Co. at a value of $750,000. It has now been established that these bonds are worthless and accordingly the decedent's liability on account of the indebtedness of the firm is increased in the sum of $665,777.78, which constitutes a proper deduction.

After taking into consideration the proposed adjustments, the value of the net estate is found to be $5,187,927.50, the tax upon the transfer of which amounts to $679,085.50. The estate paid a tax of $823,018.79, resulting in a total excess payment of $143,933.29, of which amount $10,777.73 is subject to be refunded as a result of the adjustment allowed on the basis of the first claim, and $133,155.56 as the result of the adjustment allowed on the basis of the second claim.

In view of the foregoing, it is recommended that the proposed refunds be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved.

D. H. BLAIR,
Commissioner of Internal Revenue.

OFFICE OF THE GENERAL COUNSEL
BUREAU OF INTERNAL REVENUE,
September 16, 1927.

In re "X" Leather Co.

MR. COMMISSIONER: A certificate of overassessment of corporation income and profits taxes has been prepared in favor of the above-named company for the year 1919 in the amount of $346,813.36.

The overassessment is principally due to the allowance of a deduction in income through a revaluation of the inventory of raw hides

owned by the taxpayer on December 31, 1919. Other adjustments to income have been made increasing the income shown on the return by approximately $2,000,000, which increase in income has been offset by the allowance of the reduction in closing inventory.

The income shown by the original consolidated return has been increased in the present audit of the case in the amount of $1,976,651.06. This increase in income is due to the disallowance of deductions taken on the original return for donations in the amount of $1,230, Federal income and profits taxes in the amount of $2,465.45, depletion in the amount of $145,891.70, depreciation of $4,492.02, losses in connection with bark and timber $14,641.72, losses on the sale of capital assets in the amount of $1,203,746.93, loss on railroad property in the amount of $6,558.37, and minor adjustments of $2,642.56. In addition the Income Tax Unit has restored to taxable income, Liberty bond interest of $425 and increase in surplus reserves of $594,557.31.

The disallowance of excessive deductions claimed for depletion and depreciation is in accordance with the determination by the Income Tax Unit of the proper depreciation and depletion sustained by the taxpayer during the year 1919. The allowance made in the present audit of the case is based upon a field examination and represents the actual depreciation and depletion sustained. The net increase in the surplus reserves was caused by charges to book profit and loss and the restoration of these erroneous charges to taxable income appears proper. The loss on the sale of capital assets arises in connection with deductions claimed by the "X" Leather Co. of $176,444.28, the "Y" River Land Co., $20,283.58; "R" and "S" Railroad Co., $2,450; "P" Tannig Co., $515,814.58; and "T" Tanning Co., $488,774.29.

In this connection the Income Tax Unit has found that the assets disposed of consisted of plants abandoned before March 1, 1913, and that the plants had a sales price in between the cost and their March 1, 1913, value. The taxpayer has acquiesced in the restoration to income of the amounts erroneously charged off as losses in connection with the sales of these plants. The loss claimed on the railroad property is in connection with property which was neither abandoned nor charged off during the year 1919. This claimed loss on the railroad property has accordingly been disallowed as a deduction from gross income by the Income Tax Unit. The foregoing additions to income appear proper, and as above stated, the taxpayer has acquiesced in the same.

The income shown on the return as increased by approximately $2,000,000 above explained, has been reduced by the revaluation of the closing inventory in the amount of $3,969,210.54 and the overassessment arises out of this change in inventory value. The Income Tax Unit has fixed prices on the various grades of raw hides owned by the taxpayer after a review of prevailing prices as indicated in trade papers of December 31, 1919. The prices fixed by the unit represent the actual market on December 31, 1919, and appear to have been determined in view of substantial market movements. The result of the revaluation of inventories is indicated in the following schedule:

Recapitulation of revised inventory

	Per books	As claimed	As allowed
Leather in stores	$17,117,048.59	$14,280,413.22	$14,117,048.59
Lumber	1,171,352.36	853,605.76	1,171,352.36
Glue	434,799.00	369,667.94	434,799.00
Hides	39,577,036.68	34,956,875.25	35,607,826.14
Betterments, etc	16,637,587.34	16,637,587.34	16,637,587.34
Total	74,937,823.97	67,098,148.51	70,968,613.43
Revised	70,968,613.43		
Reduction	3,969,210.54		

The invested capital shown on the original return has been reduced by $11,836,116.61. The reduction in capital is principally due to the exclusion of good will, the cash value of which at acquisition could not be satisfactorily established by the taxpayer. The reduction in invested capital increases the tax liability and reduces the present overassessment. The limitations of the good will included in invested capital to its cash value at acquisition is in accordance with the provisions of section 326 (a) (4) and (5) of the revenue act of 1918.

In view of the foregoing, it is recommended that the overassessment above indicated be allowed.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Approved September 15, 1927.

D. H. BLAIR,
Commissioner of Internal Revenue.

DECEMBER 6, 1927.

Mr. L. H. PARKER,
Chief Division of Investigation,
Joint Committee on Internal Revenue Taxation,
House Office Building, Washington, D. C.

In re "X" Leather Co.

MY DEAR MR. PARKER: Pursuant to your written instructions, I have made an examination of the above-named taxpayer's case, in which a refund of $346,813.36 is proposed for the year 1919.

The principal item constituting adjustments resulting in the refund is the repricing of an inventory item at the end of the taxable year, classified in schedules as hides. The pricing of the hides has been made upon the basis of the market value at the date of the inventory, whereas the taxpayer's original return showed the hides at cost. Data sufficient to verify the correctness of these pricings is not available, and an examination of the schedule would seem to indicate that the prices have been carefully worked out.

It is, therefore, recommended that no objection to the proposed refund be made.

Respectfully,

G. D. CHESTEEN,
Corporation Auditor

EXHIBIT No. 4

UNITED STATES STEEL CORPORATION AND SUBSIDIARIES

Part 1. Taxes paid on account of year 1917

(Date and amount of payments of 1917 income and excess-profits taxes)

Date paid and net amount paid (after legal discount):	
Apr. 23, 1918	$9,989,766.97
Apr. 25, 1918	27,145,910.19
Apr. 27, 1918	51,226,964.12
May 6, 1918	110,698,167.19
May 8, 1918	32,492.16
May 13, 1918	28,344.45
May 14, 1918	848.72
Dec. 29, 1919	7,190,165.71
Dec. 3, 1920	6,369,497.75
Feb. 14, 1921	167,073.30
Aug. 29, 1921	4,000,000.00
Total payments	216,849,230.56

Part 2. Overpayments allowed on account of above payments for the year 1917, i. e., credits or refunds

Date	Credit to subsequent years	Refunded in cash
Aug. 9, 1926	[1] $22,621,502.92	
Jan. 15, 1927		$37,503.39
Feb. 18, 1928	[2] 5,640,568.37	
Jan. 5, 1929 (proposed)		15,756,595.72
Total	28,262,071.29	15,794,099.11

[1] To 1918. [2] To 1919–20.

Total credits and refunds $44,056,659.16.

Part 3. Interest on credits and refunds

(Date and amount of interest payments by the Government to the taxpayer)

	Credited to subsequent years	Refunded in cash
Sept. 20, 1926		$252,204.93
Feb. 1, 1927		13,719.56
Feb. 18, 1927	[1] $732,269.38	
Jan. 5, 1929 (proposed)		[2] 11,000,000.00
Total	732,269.38	11,265,924.49

[1] To 1919–20. [2] Approximate.

Total interest credited and refunded $11,998,193.87.

Part 4. Interest that will be due on credits against additional taxes for subsequent years which may have been erroneously assessed

Date:	Interest to be refunded
Future (approximate)	$13,000,000

Part 5. Summary

Taxes paid		$216,849,230.56
Refunds and credits	$44,056,659.16	
Interest paid or credited	11,998,193.87	
Probable additional interest	13,000,000.00	
		69,054,853.03
Probable final tax, less interest		147,794,377.53
(1) Years adjusted, 1916 and 1917:		
Original tax, 1916	$61,218.24	
Correct tax	58,052.62	
Overassessment		$3,165.62
Original tax, 1917	1,093,140.66	
Additional tax, 1917	1,153.93	
Total	1,094,294.59	
Correct tax	574,593.80	
Overassessment		519,700.79
Total overassessment		522,866.41
Adjusted by credit to taxes for 1919 and 1920.		
(2) Years adjusted, 1917, 1919, and 1929:		
Original tax, 1917	$1,387,849.62	
Correct tax	311,218.56	
Overassessment		$1,076,631.06

(2) Years adjusted, 1917, 1919, and 1929—Continued.

Original tax, 1919	$927,866.04	
Correct tax	None.	
Overassessment		$927,866.04
Original tax, 1920	301,449.87	
Correct tax	None.	
Overassessment		301,449.87
Total overassessment		2,305,946.97

Adjusted by refund of $557,551.87 and credit of $1,748,395.10 to taxes due for 1918.

(3) Years adjusted, 1918 and 1919:

Original tax, 1918	$385,614.71	
Correct tax	44,212.93	
Overassessment		$341,401.78
Tentative tax, 1919	25,000.00	
Final tax	112,871.99	
Total	137,871.99	
Correct tax	68,786.08	
Overassessment		69,085.91
Total overassessment		410,487.69

Adjusted by refund of $331,298.39—credit of $55,765.45 to taxes due for 1920 and 1921 and abatement of $23,423.85.

(4) Years adjusted, 1919, 1920, and 1921:

Original tax, 1919	$190,947.70	
Correct tax	None.	
Overassessment		$190,947.70
Original tax, 1920	130,639.11	
Correct tax	104.46	
Overassessment		130,534.65
Original tax, 1921	176,427.14	
Correct tax	74,828.53	
Overassessment		101,598.61
Total overassessment		423,080.96

Adjusted by credit to taxes due from Joseph Widener, George P. Widener, and Eleanor Widener Dixon for the year 1919.

(5) Year adjusted, 1919:

Original tax	$22,176,382.82	
Correct tax liability	14,388,696.56	
Overassessment		$7,787,686.26

Adjusted by credit to taxes for the fiscal year ended June 30, 1919.

(6) Years adjusted, 1918, 1919, and 1922:

Original tax for 1918	$21,323,497.00	
Additional tax	71,131.39	
Total tax assessed	21,394,628.39	
Correct tax liability	16,673,134.29	
Overassessment		$4,721,494.10
Original tax for 1919	9,706,950.52	
Correct tax liability	7,808,125.16	
Overassessment		1,898,825.36
Original tax for 1922	6,402,763.08	
Correct tax liability	6,105,755.16	
Overassessment		297,007.92
Total overassessment		6,917,327.38

Adjusted by credit to taxes for the years 1920, 1921, 1923, 1925, and 1926.

(7) Year adjusted 1919:

Original tax	$2,826,421.04	
Correct tax liability	1,611,840.42	
Overassessment		$1,214,580.62

Adjusted by credit to taxes for the year 1918.

(8) Year adjusted 1919:

Original tax	$275,647.77	
Correct tax liability	None.	
Overassessment		$275,647.77

Adjusted by credit of $113,625.29 to taxes for the year 1922 and by refund of $162,022.48.

(9) Year adjusted 1919:

Original tax	$534,217.04	
Correct tax liability	392,843.00	
Overassessment		$141,374.04

Adjusted by credit to taxes for the years 1920 and 1923.

(10) Year adjusted, 1917:

Original tax	$1,760,553.95	
Additional tax	55,654.31	
Total tax assessed	1,816,208.26	
Correct tax liability	1,565,176.08	
Overassessment		$251,032.18

Adjusted by abatement of $13,020.55 and by credit of $238,011.63 to taxes for the year 1928.

(11) Year adjusted, 1918:

Original tax	$1,165,033.65	
Amended tax	681,568.99	
Additional tax	59,829.80	
Total	1,906,432.44	
Correct tax liability	1,123,143.79	
Overassessment		$783,288.65

Adjusted by the following:

Abated	$7,530.28
Credited to 1919 additional tax	598,274.34
Refunded	177,484.03
Total	783,288.65

(12) Years adjusted, 1923 and 1924:

Original tax, 1923	$478,145.88	
Correct tax liability	443,553.11	
Overassessment		34,592.77
Original tax, 1924	424,115.74	
Correct tax liability	357,545.16	
Overassessment		66,570.58
Total overassessments		101,168.35

Total amount adjusted by credit to 1922 additional tax.

(13) Period adjusted—April 1, to December 31, 1918:

Original tax	$206,045.82	
Correct tax liability	None.	
Overassessment		206,045.82

Adjusted by credit to 1916, 1917, 1918, 1919, and 1920 additional tax.

(14) Years adjusted, 1923 and 1924:

Original tax, 1923	$205,444.79	
Less 25 per cent reduction	51,361.20	
	154,083.59	
Correct tax	None.	
Overassessment		$154,083.59
Original tax, 1924	69,796.32	
Correct tax liability	None.	
Overassessment		69,796.32
Total overassessments		223,879.91

Adjusted by credit to additional taxes assessed against Ellen S. Booth, William E. Scripps, and Anna S. Whitcomb for the years 1923 and 1924.

(15) Year adjusted, 1926:

Tax assessed	$145,399.64	
Tax liability	17,339.86	
Overassessment		128,059.78

Adjusted by credit to additional tax assessed for the year 1925.

(16) Year adjusted August 31, 1918:

Original tax assessed	$295,139.87	
Additional tax assessed	240,330.11	
Total	535,469.98	
Tax liability	81,901.12	
Overassessed		453,568.86

Adjusted as follows:

Abated	232,798.61
Credit 1917 additional tax	195,499.95
Credit Aug. 31, 1919, additional tax	25,270.31

(17) Year adjusted, June 30, 1918:

Original tax assessed	$109,553.08	
Amended return	17,147.01	
Supplemental return	80,046.26	
Total	206,746.35	
Tax liability	140,815.94	
Overassessment		$65,930.41
Year adjusted, June 30, 1919:		
Tax assessed	93,614.68	
Tax liability	None.	
Overassessment		93,614.68
Year adjusted, June 30, 1920:		
Tax assessed	250,578.70	
Tax liability	190,743.24	
Overassessment		59,835.46
Total overassessment		219,380.55

Adjusted by abatement of $18,216.64, credit of $175,675.84 applied to additional tax for fiscal year, June 30, 1923, and by refund of $25,488.07.

(18) Year adjusted, 1926:

Tax assessed	$253,458.82	
Tax liability	3,233.73	
Overassessment		$250,225.09

Adjusted by credit to additional tax for year 1925.

(19) Year adjusted, 1918:

Tax assessed	$97,165.39	
Tax liability	616.05	
Overassessment		$96,549.34
Year adjusted, 1919:		
Tax assessed	58,574.54	
Tax liability	1,205.69	
Overassessment		57,368.85
Year adjusted, 1920:		
Tax assessed	118,422.72	
Tax liability	774.47	
Overassessment		117,648.25
Year adjusted, 1921:		
Tax assessed	38,085.85	
Tax liability	1,306.38	
Overassessment		36,779.47
Year adjusted, 1922:		
Tax assessed	39,441.30	
Tax liability	1,376.88	
Overassessment		38,064.42
Year adjusted, 1923:		
Tax assessed	49,831.84	
Tax liability	1,608.81	
Overassessment		48,223.03
Total overassessment		394,633.36

Adjusted by credit of $375,064.06 credited to additional taxes for the years 1918 to 1923 inclusive assessed against the subsidiary companies, Green Island Mill Corporation and Manning & Peckham Co., and by refund of $19,569.30.

(20) Years adjusted, 1917 and 1918:

Original tax for 1917	$8,063,043.65	
Additional tax, April, 1920 L	3,546,474.33	
Additional tax, August, 1920 L	32,138.37	
Total tax assessed	11,641,656.35	
Correct tax liability	11,575,125.62	
Overassessment		$66,530.73
Original tax for 1918	16,112,393.64	
Additional tax, April, 1920 L	7,908,618.57	
Additional tax, August, 1920 L	2,185,947.36	
Total tax assessed	26,206,959.57	
Correct tax liability	23,321,490.77	
Overassessment		2,885,468.80
Total overassessments		2,951,999.53

Adjusted as follows:

Total amount abated	2,209,160.69
Total amount credited to 1919 additional tax	517,036.16
Amount refunded, 1918	225,802.68
Total	2,951,999.53

(21) Year adjusted (fiscal ending August 31, 1917):

Original tax	$687,170.65	
Additional tax	1,485,973.05	
Total	2,173,143.70	
Correct tax	729,510.63	
Overassessment		1,443,633.07

Adjusted by abatement of $1,214,067.95 and credit of $229,565.12 to taxes due for fiscal years ending August 31, 1914; August 31, 1915; August 31, 1916; and August 31, 1918.

(22) Year adjusted, 1918:

Original tax	$7,239,847.04	
Correct tax liability	4,094,508.15	
Overassessment		3,145,338.89

Adjusted by abatement of $1,777,954.63, refund of $126,790.40, and credit of $1,240,593.86 to taxes due for the year 1920 and to interest on deficiencies in tax for the years 1909, 1910, 1911, 1913, 1914, 1915, 1916, 1917, and 1919.

(23) Year adjusted, 1918:

Original tax	$490,782.11	
Correct tax liability	117,996.55	
Overassessment		372,785.56

Adjusted by credit to taxes for the years 1917 and 1920.

(24) Year adjusted, 1918:

Original tax	$5,127,028.58	
Correct tax	4,606,116.46	
Overassessment		520,912.12

Adjusted by credit to taxes due for the years 1919 and 1922.

(25) Year adjusted, 1919:

Original tax	$2,961,386.69	
Additional tax	6,468.07	
Interest	285.30	
Total	2,968,140.06	
Correct tax liability	2,728,625.38	
Overassessment		239,514.68

Adjusted by credit to taxes due for 1920.

COMMUNICATIONS TO THE TREASURY DEPARTMENT BY L. H. PARKER

JULY 12, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Walker-Johnson Building, Washington, D. C.

DEAR MR. ALVORD: In connection with the overassessments totaling $1,231,006.78 proposed in the case of P. Lorillard & Co., of New York, and submitted to this committee on June 21, 1928, the following comments are made:

This division has substantially the same opinion in regard to this allowance as in the case of the R. J. Reynolds Tobacco Co. (Our letter dated August 9, 1927.) However, as the bureau, after review, did not sustain our opinion in the Reynolds case to request another review on the same points in this case would appear to occasion unnecessary work, and therefore such a request is not made.

On June 4, 1928, the Supreme Court of the United States held in the Williamsport Wire Rope Co. case that the courts were without jurisdiction to review the determination of the commissioner in special assessment cases. In view of the fact that during our investigation of the R. J. Reynolds case we were informed that the case was allowed because it was feared that the taxpayer would get a larger refund by going to the courts, and using the American Tobacco Co. as a comparative, it would seem proper to request your consideration of the question as to changing the policy of the bureau in such cases as this, where no "exceptional hardship" is proven, and where the taxpayer is not entitled to relief except through executive action.

It is not desired to bring about any loss of interest to the Government in this case, but, as the date of payment is not until July 21, it is believed sufficient consideration can be given to our second comment in the nine days available.

Very truly yours,

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JULY 12, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Walker-Johnson Building, Washington, D. C.

DEAR MR. ALVORD: Please find inclosed copy of a report from Mr. G. D. Chesteen, corporation auditor for this committee in regard to the overassessment proposed in the case of Eisemann Bros., Boston, Mass. This case was submitted to the committee on June 25, 1928, and the 30-day period will expire on July 25.

The overassessment in this case is due entirely to the allowance of special assessment under section 210 of the revenue act of 1917. The ground for the allowance is excessive borrowed capital.

It is the opinion of Mr. Chesteen, concurred in by the writer, that excessive borrowed capital does not constitute a ground for special assessment in the year 1917, and that this opinion is sustained by the Board of Tax Appeals Decisions and the position taken by the appeals division of the general counsel's office.

It is requested that due consideration be given to the points raised in Mr. Chesteen's report before the refund or credit occasioned by this overassessment is finally made. As 13 days remain before the 30-day period expires, and as there is practically only one issue involved, it appears certain that ample time is available for such consideration without causing loss of interest to the Government.

Very truly yours,

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JULY 13, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Walker-Johnson Building, Washington, D. C.

DEAR MR. ALVORD: Application of the special-assessment provisions, section 210 of the revenue act of 1917 and sections 327 and 328 of the revenue acts of 1918 and 1921, by the Bureau of Internal Revenue are still giving this office much concern.

Your consideration is requested of the following propositions which appear to be correct from our investigation:

1. During the year March 1, 1927, to March 1, 1928, out of the total refunds and credits allowed by the bureau and submitted to the joint committee under the urgent deficiency bill, it was found that 21 per cent in amount of money were due to the allowance of special assessment.

2. It appears, therefore, that the total refunds and credits on account of special assessment were very probably in the neighborhood of $50,000,000 for the year above noted if the same relation existed in the smaller refunds as in those over $75,000.

3. The Supreme Court of the United States decided on June 4, 1928, in the case of the Williamsport Wire Rope Co. against the United States, that the courts have no jurisdiction to review the determinations of special assessment made by the Commissioner of Internal Revenue. It results that while deficiencies may be reviewed by the Board of Tax Appeals, the determination of the commissioner in regard to special assessment where refunds or credits are involved, is final.

4. It now appears that the commissioner had it entirely within his discretion during the period above noted whether to give back this

$50,000,000 to the taxpayers or not, a power which is unique in our executives branch, as the return of such money could not be enforced by law.

5. Under the revenue act of 1928, refunds and credits in excess of $75,000 are still submitted to the joint committee. These refunds, under the act above mentioned, were first submitted on June 9, 1928. On July 11, out of a total number of 45 cases submitted under the above act 11 cases, or 24 per cent, were due principally to the allowance of special assessment.

6. The different divisions of the general counsel's office are not in accord on the basis for the allowance of special assessment. The appeals and civil divisions hold, for instance, that borrowed capital does not constitute an abnormality under the revenue act of 1917. On the other hand, the interpretative and claims divisions hold that borrowed capital does constitute an abnormality. (See report on Elsemann case already submitted.) From the above, it results that the bureau is more liberal in allowing refunds and credits than it is in assessing additional tax. This state of affairs appears indefensible.

It is the opinion of the writer that in view of the fact that the special-assessment provisions have not been in the revenue acts since 1921 and also because there appears to be no diminution in the amount of refunds and credits allowed under these provisions, that the application of same be given serious consideration in order to restrict the granting of refunds and credits to the really meritorious cases.

This division can not help but note that while the law requires that an "exceptional hardship" must be proven in each case, the bureau rarely, if ever, meets this requirement and contents itself merely with proving an abnormality. It appears far from the purpose of Congress to give relief to corporations with large surpluses who are, and were, well able to pay the statutory tax, to say nothing of the fact that in these refund and credit cases the tax was, of course, actually paid.

The writer would also like to examine the record of special-assessment cases kept by the commissioner in accordance with section 328 (c) of the revenue acts of 1918 and 1921, and awaits your advice as to where such record may be examined.

It appears to the writer that the general subject of special assessment is of such importance that the policy of the bureau on these determinations should be the subject of conference, especially in view of the Williamsport Wire Rope Co. case above noted. I would be glad to be informed as to your views on this subject.

Very truly yours,

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MARCH 28, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Walker-Johnson Building, Washington, D. C.

DEAR MR. ALVORD: Inclosed please find a copy of a report addressed to me from the corporation auditor of this committee in reference to the refund proposed on schedule No. 28611 to the Montana Power Co., of Butte, Mont.

It appears from this report that there may exist an error in the computation of invested capital due to the failure to take into account all the assets and liabilities of a subsidiary company upon its acquisition. The apparent omission of some $19,000,000 in bonds outstanding seems particularly important.

It is requested that the case be reviewed on the points raised in this memorandum and that the writer be advised of the results of your review. Date of payment in this case is April 30, 1928.

Very truly yours,

L. H. PARKER.

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MARCH 26, 1928.

Mr. L. H. PARKER,
Chief Division of Investigation,
Joint Committee on Internal Revenue Taxation,
House Office Building, Washington, D. C.

In re Montana Power Co., 40 East Broadway, Butte, Mont.

MY DEAR MR. PARKER: Pursuant to your written instructions, I have made an examination of the proposed refund to the above-named taxpayer in the amounts and for the years as set forth below:

Year	Amount
1920	
1921	$35,660.71
1922	39,325.29
	62,441.94

The proposed refund for the year 1920 appears to be in error. The basis for this conclusion is set forth below:

FINDING OF FACTS

The commissioner has determined a net income for the year 1920 in the amount of $2,928,172.17. The excess-profits tax is not computed in the final A–2 letter. A previous A–2 letter, however, dated January 18, 1927, disclosed an invested capital of $40,927,903.94, and upon the basis of this computation the commissioner in the final A–2 letter to the taxpayer stated that the credit under the provisions of section 312 was in excess of the net income and for that reason no excess-profits tax was due for the calendar year 1920. The computation of invested capital as thus disclosed appears to be in error. The facts and reasons for this position are as follows:

OPINION

The Montana Power Co. was organized in December, 1912, with an authorized capital stock of $25,000,000 preferred and $75,000,000 common. The company was organized for the purpose of effecting a merger of a number of small public utilities operating in Montana and adjoining States. At the time of incorporation, capital stock was issued for the following companies and their subsidiaries: Butte Electric & Power Co., Madison River Power Co., Missouri River Electric & Power Co., and Billings & Eastern Montana Power Co. These companies, with their subsidiaries, were merged with the Montana Power Co. as a result of their acquisition. The record does not show whether the stock of the Montana Power Co. was issued to the companies direct, or whether it was issued to the stockholders of these companies, after which the companies were liquidated. In either case, the treatment for income-tax purposes is the same, and the manner in which the merger was effected is not material.

Among the assets of the Butte Electric & Power Co. was one-half the capital stock outstanding of the Great Falls Water Power & Townsite Co. The taxpayer, in the instant case, desiring to own the entire capital stock of this company, in the following year—that is, the calendar year 1913—issued $17,500,000 common and $5,000,000 preferred stock to John D. Ryan, the then owner of the remaining one-half capital stock of the foregoing company. An additional $5,000,000 capital stock was then issued for the entire capital stock of the Thompson Falls Power Co., the capital stock of the latter company being $5,000,000.

Subsequent to the acquisition of the Great Falls Water Power & Townsite Co., which was a holding company, the capital stock of the latter was reduced by partial liquidation, in which the stock of its subsidiaries—the Great Falls Power Co. and the Great Falls Townsite Co.—were distributed to the parent company. The organization thus effected continued through the taxable years 1917 to 1923. It is apparent therefore that the Montana Power Co. issued its stock partly as a result of the merger of certain companies and partly for the acquisition of certain subsidiary companies. For the purpose of invested capital for the years 1917 to 1921, the bureau has consistently held that where stock of a subsidiary is acquired by stock of the parent company the amount to be included in consolidated invested capital with respect to the company acquired is computed in the same manner as if the assets had been acquired instead of the stock. This position has been upheld by the Board of Tax Appeals (see Hollingsworth, Turner & Co., Vol. I, United States Board of Tax Appeals Repts., p. 958).

The bureau apparently attempted to apply the principle set forth above in the computation of invested capital in this case, but, due to an error in excluding the excess value reported on the return, appears to have allowed an excess amount in invested capital for the year 1920 to the extent of approximately $16,401,077.74. It is obvious, from the statements set forth above as to the manner of issue of capital stock for assets, that liabilities of all properties merged, as well as affiliated, at the time of issue of capital stock, must be taken into consideration in determining the net amount of capital stock issued for properties. The taxpayer appears to have set up on its books at the time of incorporation the entire par value of capital stock issued therefor. An appraisal was made of all physical properties, and a write up in excess of these properties as carried on the predecessor company's books was made to the extent of the amount necessary in order to make a total of assets equal to the total capital stock and liabilities of the companies merged.

COMPUTATION OF INVESTED CAPITAL AS SHOWN BY THE BUREAU IN A–2 LETTER, DATED JANUARY 18, 1927

1920

Invested capital as shown by return	$63,231,451.38
As corrected	40,927,903.94
Net reductions as explained below	22,303,547.44
Additions:	
(a) Organization expense	397,000.10
(b) Minority interest	530.00
(c) Reserves	73,323.03
(d) Refund of 1917 Federal income tax	27,590.06
(e) Bond discount amortization	10,576.20
(f) Overassessment, 1918	42,827.31
Total additions	551,846.70
Reductions:	
(g) Interest during construction	885,581.01
(h) Appreciation	20,264,102.77
(i) Additional depreciation	368,402.27
(j) Federal income tax for 1919	80,726.03
(k) Unsubscribed stock	13,183.61
(l) Employees' stock subscription	210,069.60
(m) Dividends paid Jan. 1, 1920	494,812.75
(n) Inadmissibles	538,516.10
Total reductions	22,855,394.14
Net reductions as above	22,303,547.44

The corrected invested capital is approximately as follows:

Invested capital as shown above in A–2 letter, dated Jan. 18, 1927		$40,927,903.94
Deduct:		
(a) Appreciation at date of acquisition not eliminated	$16,401,077.74	
(b) Additional depreciation for 1918 and 1919 allowed	628,142.89	
(c) Amortization allowed for 1918	238,970.20	
		17,268,190.83
Corrected invested capital		23,659,713.11

Explanation of items changed

(a) Adjustment for appreciation of assets at date of incorporation:

Value of plant, equipment, water rights, etc. at date of acquisition	$35,965,274.01	
Excess of other assets over all liabilities other than bonds of companies outstanding at date of acquisition	2,577,878.81	
Total		$38,543,152.82
Less: Par value of bonds outstanding at date of acquisition		19,775,000.00
Actual cash value for which stock of $55,433,333.33 was issued		18,768,152.82
Par value of stock issued		55,433,333.33
Net reductions		36,665,180.51
Reduction made by bureau letter, dated January 18, 1927		20,264,102.77
Excess invested capital allowed		16,401,077.74

(b) Additional depreciation for 1918 and 1919:

Name of company	Year	Additional depreciation and replacements
Montana Power Co	1918	$145,537.57
Montana Reservoir Co	1918	11,923.35
Idaho Transmission Co	1918	2,535.63
Thompson Falls Power Co	1918	15,461.03
Montana Power Co	1919	272,646.54
Great Falls Power Co	1919	147,531.81
Thompson Falls Power Co	1919	15,908.90
Montana Reservoir and Irrigation Co	1919	11,926.81
Idaho Transmission Co	1919	4,671.25
Total		628,142.89

The above additional depreciation has been allowed in the closing of the years 1918 and 1919 in excess of the amount allowed in A–2 letters for those years prior to the date of the issue of the A–2 letter for 1920, as shown above.

(c) Amortization allowed for 1918:

Name of company: Montana Power Co.; year, 1918; amortization allowed, $238,970.20.

The above represents the amount recommended in an engineer's report dated January 9, 1928, which appears not to have been given effect to at the time of the preparation of this memorandum.

On the basis of the invested capital set forth above the approximate additional tax due for the year 1920 is $259,380.42, as shown by the following computation:

Excess-profits credit

8 per cent of invested capital		$1,840,777.05
Special exemption		3,000.00
Excess-profits credit		1,843,777.05

Computation of excess-profits tax

Invested capital	per cent	20
Income		$3,284,779.33
Credit		$1,843,777.05
Balance		$1,441,002.28
Rate	per cent	20
Tax		$288,200.46

Income tax

Net income		$3,284,779.33	
Less:			
Interest on obligations of United States not exempt	$104.51		
Excess-profits tax	288,200.46		
Exemption	2,000.00		
		290,304.97	
Balance taxable at 10 per cent		2,994,474.36	299,447.44
Total income and excess-profits tax			587,647.90
Tax previously assessed			328,267.48
Additional tax due for 1920			259,380.42

Inasmuch as the commissioner has proposed a refund of $35,660.71, whereas there appears to be an additional tax due of approximately $260,000, it would appear that the apparent error should be called to the attention of the bureau in order that the determination might be made of whether or not a refund should be proposed in this case.

VALUATION OF PROPERTIES

The result of book entries at the date of incorporation and acquisition of the properties was to record in the account of properties, an excess value sufficient to set up the par value of the capital stock of the companies. The taxpayer, in the year 1913, appears to have made an appraisal of the properties for the purpose of rates, and, in accordance with this determination, made claim to its original book entries for valuation of properties. An engineer of the amortization section of the Internal Revenue Bureau, J. W. Swaren, was assigned to this case, and, after an exhaustive examination, set up a valuation of physical properties at the date of acquisition of the companies, in the following amounts:

Subsidiary	Value of—			Total
	Physical assets	Water rights	Intangibles	
Butte Electric & Power Co.	$3,000,348.57	$0.00	$379,029.40	$3,379,377.97
Madison River Power Co.	4,508,209.76	0.00	0.00	4,508,209.76
Billings & Eastern Montana Power Co.	1,549,008.08	9,760.40	987,917.90	2,546,686.38
Missouri River Electric & Power Co.	7,699,029.02	0.00	0.00	7,699,029.02
Thompson Falls Power Co.	145,833.43	2,234,188.28	0.00	2,380,021.71
Great Falls Power Co.	8,016,407.29	7,150,042.00	0.00	15,166,449.29
Rainbow Hotel (two-thirds interest)	185,925.33	0.00	0.00	185,925.33
National Realty Co. (one-half interest)	22,593.75	0.00	0.00	22,593.75
Total	25,127,355.23	9,393,990.68	1,366,947.30	35,888,293.21

It is therefore recommended that for the purposes of computing the invested capital of the taxpayer, that the sum of $35,888,293.21 be established as the values of properties acquired by stock issue at the time of merger.

In addition to the above properties, the taxpayer made claim for other properties acquired by stock issue, as follows:

Subsidiary	Date of acquisition	Value of assets acquired			
		Physical	Water power	Intangibles	Total
Conrad Electric and Power Co.	Oct. 1, 1913	$21,757.87	$0.00	$0.00	$21,757.87
Mesa Power Co.	Aug. 5, 1914	55,222.93	0.00	0.00	55,222.93

All costs and audit features of this appraisal are subject to check by the auditor or revenue agent assigned to the field investigation of this case.

Protest to this valuation appears not to have been made. The record indicates that the taxpayer accepted immediately the valuation proposed by the bureau. This valuation, it will be noted, has been used in the computation of the corrected invested capital. The engineer, in making the computation of the value of water rights, utilized the records and results of the taxpayer for the period 1913 to the date of the examination, 1923. He also made approximations and speculations as to what the possibilities as to earning power and increase in the plant and development of water rights would be up to 1942. The utilization of subsequent results of a taxpayer and the approximation of a long period of future years as to growth of population, increase in industrial plants, and amount of electricity to be used, to establish the value of water rights at a given date, in order to prove the actual cash value of stock issued therefor for invested capital, appears open to question in the light of the provisions of section 326 of the revenue act of 1918. It is not believed, however, in view of the amount established for water rights, that even though the principles adopted may be open to question, the results should be criticized. Comparison of the market value of the capital stock of the company immediately after incorporation while probably influenced by future possibilities, yet is some indication of the value of properties acquired. According to stock quotations, the stock of the company on March 1, 1913, had a value of approximately $45 per share. Careful study of the whole file in the case with respect to the valuation of the property, convinces the reviewer that the value recommended by the engineer is reasonable and is not open to question.

COMMENTS AS TO PRIOR YEARS

The apparent overstatement of invested capital as shown for the year 1920 was also made in the years 1918 and 1919. In those years the taxpayer was determined not to be subject to excess-profits tax, and a refund was granted in each year, the amount being approximately $80,000 for both years. A tentative approximation of the apparent error for the year 1918 would indicate an additional tax was due of approximately $750,000. The taxpayer, in the year 1918, reported an income of approximately $3,200,000. This gives an approximate tax of 25 per cent.

The question of whether or not the taxpayer might be entitled under those circumstances to special assessment, of course, can not be approximated. It is possible that if a tax of this amount had been proposed the taxpayer would have been entitled to some reduction of the $750,000, on the basis that the tax should have been determined in comparison with representative corporations doing similar business, as provided in sections 327 and 328 of the revenue act of 1918. The years 1918 and 1919 appear to have been outlawed so far as the right of the Government to impose an additional tax is concerned. There is, however, apparently a claim pending for further refund for the year 1918, based upon the fact that the bureau has proposed to allow amortization in the amount of approximately $238,000. It is obvious that the taxpayer would be entitled to at least $25,000 further refund for the year 1918, unless the correction for invested capital mentioned is made.

For the year 1919 it has not been deemed necessary to set up a computation for invested capital. An approximation of the invested capital would indicate that a small amount of excess-profits tax would have been due for that year, but inasmuch as the statute has run as to additional assessment and no claims for further refund are pending it has not been necessary to make the computation.

For the year 1921 the reviewer has not made a computation of invested capital. It is assumed that the bureau in reviewing the question raised as to 1920 will make proper correction of any adjustment found necessary with respect to 1921 if it is found that an excess-profits tax is due for that year.

Respectfully,

G. D. CHESTEEN,
Corporation Auditor.

FEBRUARY 9, 1928.

Mr. E. C. ALVORD,
Special Assistant to the Secretary of the Treasury,
Washington, D. C.

MY DEAR MR. ALVORD: In regard to the proposed refund in the case of the Diamond Coal & Coke Co., Pittsburgh, Pa., it appears that there may be an error in the computation of this refund, due to the allowance of both amortization and depreciation on the same property in the same year. I inclose herewith a copy of a report addressed to me from Mr. Chesteen, corporation auditor of this committee, which outlines his opinion in regard to the apparent error above noted.

This refund is contained on schedule No. 28092, the date of payment being March 19, 1928.

Please advise me as to the opinion of the general counsel on the question raised.

Very truly yours,

L. H. PARKER.

Mr. ANTHONY. Mr. Chairman, I yield the balance of my time to the gentleman from Indiana [Mr. WOOD].

Mr. WOOD. Mr. Chairman, and gentlemen of the committee——

Mr. WINGO. Before the gentleman proceeds I would like to ask a question, because there is some confusion about it. Does this action in the court involving $100,000,000 principal and $60,000,000 interest cover the 1917 year only, or does it include all previous years?

Mr. WOOD. My information is that it covers everything involved in the 1917 returns.

Mr. WINGO. And the subsequent years might be more?

Mr. WOOD. Yes; I understand there are the return years 1918, 1919, and 1920 yet to settle.

Mr. GARNER of Texas. You know all 12 cases cover a billion dollars.

Mr. WINGO. What I wanted to know was whether it covered only the 1917 claim?

Mr. WOOD. I think that is all. I find that the suit in the Court of Claims by the United States Steel Corporation for $161,000,000, composed of $101,000,000 tax and $60,000,000 interest, is for the taxes of the return year 1917. With the payment of the claim for $26,000,000 this suit will be closed forever and that will be the end of it so far as 1917 is concerned. A suit is also pending in the Court of Claims for approximately $50,000,000 and interest for the return year 1918.

Mr. WINGO. There has been some confusion about it.

Mr. WOOD. Mr. Chairman, I listened attentively to the speech made by the gentleman from Texas [Mr. GARNER] the other day. I listened with equal patience to a rehearsal of the same speech before the Committee on Appropriations, of which I am a member, and I heard the most of it again for a third time to-day.

And through all this trial and tribulation I have been trying to make up my mind what it is that has prompted the gentleman from Texas to oppose this particular appropriation.

Since the beginning of the fiscal year 1917 and down to October 1, 1928, we have refunded in round numbers $975,000,000. It seems a little peculiar that not until this particular moment has any question been raised by the gentleman from Texas about the tax refund procedure. It might have occurred, and perhaps has occurred, to some of you gentlemen while listening to him, that when the American Tobacco tax refund was up the same question was not raised about that by the gentleman from Texas. The refund to the Steel Corporation is only one of a number of cases that have had similar treatment at the hands of the Bureau of Internal Revenue.

Why was not some question raised as to some of these other cases? Can it be that disappointment has embittered the soul of the man from Texas? Can it be that because he was not successful in defeating the Greek loan that he has taken this means of getting even with the Treasury Department of the United States?

What is involved in this question? There is no more involved in this question than has been involved in all of these cases that have been coming before this Joint Committee on Internal Revenue Taxation and will continue to come before it if it continues to have the duty of receiving them. The same methods have been employed, Assistant Secretary Bond testifies, except that they have been more particular with reference to the Steel case than with most any other case, because of the amount involved, and because of the fact that it is one of the very largest corporations in the United States, and because it has been charged here that the Secretary of the Treasury of the United States is a stockholder in that concern.

The gentleman from Texas would have the country believe that the Secretary of the Treasury, Mr. Mellon, has been sitting on one side of the table dictating what these settlements should be with the interests with which he may be connected. The gentleman from Texas certainly should not try to deceive the American people into a belief of that character, when he knows that the Secretary of the Treasury has nothing to do with making these settlements, when he knows that that responsibility by law is upon the Commissioner of Internal Revenue, who is appointed by the President and confirmed by the Senate of the United States and is independent of the Secretary of the Treasury. We took pains when Mr. Bond, the Assistant Secretary, was before the committee, to inquire with reference to the procedure in this case as compared with other cases, anticipating that the very insinuations would be made that have been made to-day by the gentleman from Texas, as to whether the Secretary of the Treasury, Mr. Mellon, in any case, has ever either suggested an addition to or a subtraction from, and he said that in no case has Mr. Mellon ever intervened personally, either directly or indirectly, in the settlement.

Mr. Mellon needs no encomiums from me. Speak about his destroying the confidence of the people, should he perchance be the Secretary of the Treasury for four years more! Mr. Chairman, in behalf of the American people, I say that I hope he will be the Secretary of the Treasury for four years more. [Applause on the Republican side.] I am proud of the record that he has made. Every Republican is proud of the record that he has made. Every fair-minded Democrat is proud of the record that he has made, because he is proud of his country and of what Mr. Mellon has contributed to its success. Not since the beginning of this Government has he had a peer in that office.

Three times since he has become Secretary of the Treasury he has refunded a national loan at a lesser rate of interest than that at which it was originally put out. Never in the history of the Democratic Party was such a feat performed. In doing that Mr. Mellon has saved to the American people $75,000,000 annually in interest. The Secretary of the Treasury needs no support from me. The record that he has made is the record of the progress of this country during the period of his service, and the people of the United States can never repay the obligation that they owe to him—this man who has been reviled by some of you, who has been insinuated against. You can not point a finger to a single scintilla of evidence showing any disregard on his part in the performance of the high duty imposed upon him from the time he became Secretary of the Treasury down to this actual hour.

What is the question before the House? The gentleman from Texas (Mr. GARNER) and his party colleagues are asking you to vote against this item of $75,000,000 for refund of taxes erroneously or illegally collected. Suppose you do; what will be the result? Nothing can occur such as the gentleman from Texas would have you believe would occur by way of investigation. If any investigation were had by such a committee as he suggested the Speaker appoint, it would have nothing to do with the settlement with the Steel Corporation. That, as has already been stated, has been made. What then would be the

result? If this $75,000,000 is denied, there are thousands of people throughout the United States, large and small, who are just as much entitled to their refund as the Steel Corporation is and who would be deprived of receiving it at this time. Are you going to take the responsibility of saying to them: "You shall wait until the next session of Congress for that money that you have been waiting for since 1917? Do not you believe that you would be taking a responsibility that should not be thrust upon you, and are you willing to do it? Are you willing to say to the people of the United States that, forsooth, because you have some grudge against the Treasury Department and want to get even with it you will take this $75,000,000 appropriation out of the bill and make all the claimants wait a year or more for the money that they are entitled to between now and July 1, 1929? That is the practical result.

Those who have spoken here in opposition to this item have taken pains to say that they know of no fraud, that they know of no collusion, that they know of no illegal act involved in it. Why, then, again I ask, should this case be made an exception to those thousands of other cases? They are settling these cases at the rate of 14,400 a month. They are within three years of being current. If they are permitted to go on and settle them in this businesslike way in which we are settling them, we will be current and we will have arrived at the stage that Mr. GARNER has been trying to have us arrive at for lo these many years. But he would stop this machinery. For what purpose? No accomplishment can be had unless we change the organic law. We began in 1918 in this same manner in making these consolidated return settlements under a regulation and continued under the regulation until 1921 when this same process and policy were enacted into law, and the gentleman from Texas voted for it. So that in condemning the process that has been followed in this case, in all these cases of many millions of dollars, he is condemning the program laid down by himself, and supported by the Congress. If there should be any criticism, then the criticism should be of Congress, which fixed this process. Mr. McAdoo should be criticized, if it is wrong, for inaugurating it by Treasury regulation in 1918.

Let me say in passing, that the case to which Mr. GARNER referred here, where there was a refund of 33 per cent, 11 years ago, was not under this administration. That was under a Democratic administration, but we hear no criticism with reference to the administration that permitted that thing to be.

If this were any other claimant than the Steel Corporation, if the amount involved were $500 instead of $26,000,000, there would be no question made here to-day, unless some fraud, some collusion, or some unlawful act were pointed out. Why I ask—and I ask the gentleman from Texas to answer—should we make an exception of this case? We have been intrusting, and we must continue to trust, the matter of making these settlements to the Commissioner of Internal Revenue, because of our faith in his integrity and in the integrity of his employees.

Why, if it was not for the confidence that this Congress has in the executive officers of the Government, this Government would go to pot in no time. This Government is founded upon confidence; and I want to say to you that it has been very seldom that there has been any abuse of confidence on the part of officials high in authority in the Government of the United States. I think we can with more than justifiable pride point to the fact that no one has ever occupied the position of Secretary of the Treasury of the United States who has ever incurred the disfavor of the American people by reason of any defalcation or any malfeasance in his office.

Mr. CRAMTON. Mr. Chairman, will the gentleman yield there?

Mr. WOOD. Certainly.

Mr. CRAMTON. I think about 170,000 of these cases are handled by the department annually. What does the gentleman think of the comparative efficiency with which either the Committee on Appropriations of this House or the House itself could investigate the merits of these claims that are passed upon, and what about the possibilities of politics entering into the decisions regarding them if this House is to be the final arbiter?

Mr. WOOD. It would be made the football of politics, and you would find men upon that side trying to make political capital out of it, if perchance they were in power, and we would also find gentlemen on this side—human nature is so weak—who could not resist the temptation to take advantage of the opportunity afforded.

Now what does an investigation by this Congress of the steel cases involve? It involves 195 subsidiaries, extending over a period of 10 years or 11 years. Mr. Bond, in testifying before us, said it would take a string of trucks to haul up the papers involved in the audit of this case; that it would make a pile 10 feet high covering an entire room the size of one of the rooms of the Committee on Appropriations. Do you think that any committee appointed by this body could become as conversant with this complicated subject in a single session of Congress as have these trained men who have been put upon this special work and kept at it continuously, and doing nothing else for years? How much reliance would this House have in the action of any such committee—no matter how much confidence it might have in them—when so much is involved in these examinations, covering this period of years, with this multiplicity of interests, involving, if you please, these truck loads of documents? No. It would be physically impossible and mentally impossible.

So, after all, I say we must have confidence in those in the executive branch who are instructed to do that thing, in those who are charged under the law with that duty. If gentlemen who are criticizing now could point their finger to any dereliction of any kind or any conspiracy whereby the Government of the United States is going to lose a farthing, then there would be something in the contention that is made.

Now, then, let us look for a moment at what occurred when they sent this case up to the Joint Tax Committee. That committee is composed of five men from the Senate and five men from the House. They had a quorum present. You have heard who were there: Mr. GARNER and Mr. COLLIER, representing the minority side, and Mr. SMOOT and Mr. REED and Mr. HAWLEY, representing the majority side. Five hours were spent in the conference. After the conference had closed Mr. HAWLEY said to Mr. GARNER, "Will you make a motion to disapprove this settlement?" Then was the time for Mr. GARNER to act, or else forever hold his peace.

But taking the promise of the Treasury Department that if there was a vote of disapproval of the settlement made they would not pay it but would go into court and let it drag its weary way for 10 years with 6 per cent additional interest each year. Mr. GARNER of Texas did not make the motion. Why? It was too enormous a thing. He would not take the responsibility involved in that action. That was the consideration that moved Mr. Parker, the committee expert. He, too, did not want to take the responsibility. Mr. REED had represented the Steel Co. previously in some legal capacity. He would not make a motion on that account.

Mr. LAGUARDIA. Mr. Chairman, will the gentleman yield there?

Mr. WOOD. Yes.

Mr. LAGUARDIA. Is the Steel Co. case the only refund about which there is any question?

Mr. WOOD. There has been no question raised about the Steel Co. case. There may have been a question raised, however, by Mr. Parker, the expert, who was afraid to touch it because it was too big. Many other cases have been certified up to this committee, and no question has been raised about the amount. You can take the letters referred to by Mr. GARNER of Texas and examine them, and in no case has the gentleman found any fault with the amount agreed upon or found to be due by the Treasury Department. The only fault he has found has been in the method of computation and in the mode of procedure that has been followed in this case, like those in other cases. The method followed in those other cases is exactly the same procedure that was followed in the Steel case.

Mr. CRISP. Mr. Chairman, will the gentleman yield?

Mr. WOOD. Yes.

Mr. CRISP. I am aware that my colleague from Texas [Mr. GARNER] has expressed his opinion in the committee, but if this committee performs no function and is only a receptacle to which these returns are sent, I would like to have the gentleman's view as to the advisability of the discontinuance of this committee.

Mr. WOOD. I was opposed to placing this refund duty on the joint committee at the time it was done. I could not see how it could serve any purpose. As was stated by the gentleman from Texas, it was first placed upon an appropriation bill, a deficiency bill, as I remember. It was the result of a compromise with the Senate in an attempt made by some gentlemen at the other end of this Capitol to get some legislation with reference to publicity of tax matters. This Congress has gone on record as being opposed to this idea of publicity of tax returns, and they were seeking, through a rider upon an appropriation bill, the accomplishment of the very thing that had been denied by the Congress.

Mr. TREADWAY. Will the gentleman yield for an interruption?

Mr. WOOD. Yes.

Mr. TREADWAY. Is the gentleman referring to the manner in which the joint committee was originally created or to the fact of reporting refunds in excess of $75,000?

Mr. WOOD. I am referring to the manner in which this refund reporting scheme was originally established. My memory is that it was first established by a rider upon a deficiency appropriation bill and later put into permanent law in the 1928 revenue act. I am not referring to the original purpose for which the Joint Tax Committee was created by the 1926 revenue act.

We have found that in all these millions of dollars worth of refunds there has been no objection to the settlement but the objection has been to the method of arriving at the settlement; yet that method is the method that has been prescribed by law, following out the regulations adopted by Secretary McAdoo away back at the beginning of things in 1918.

Now, I think it is an encomium and a compliment to the Bureau of Internal Revenue and the Treasury Department that they have so conducted their audits and that they have so justly arrived at conclusions as to what is fair to the Government and fair to the taxpayers, that all of these claims, in excess of $75,000, have passed the scrutiny of the expert, and Mr. GARNER says he is an expert, well calculated to go into these things and find out what is right and what is wrong. I think it is a compliment to the department that in only one single instance out of nearly 700 such cases has there ever been found a flaw with reference to the amount of money that has been allowed by the department in connection with these refunds.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. WOOD. I yield.

Mr. LAGUARDIA. Under existing law have we any control over the payment of the refunds?

Mr. WOOD. The courts have no control over them in some cases. They have been talking here and much stress has been laid upon the fact that these refunds ought to be denied so as to force somebody to go into court and have the question determined before we pay the money. However, before we do that, gentlemen, we have something which we must do ourselves.

We must provide a law that will compel them to go into court or compel the Treasury Department to go into court, or somebody to go into court; but under the existing order of things that in some cases is impossible. Take, for example, the case of the Williamsport Wire Rope Co. under the relief sections of the 1917 and 1918 acts. In that case it was held that the court had no jurisdiction to review the action of the Commissioner of Internal Revenue. However, the court held that the Board of Tax Appeals has such jurisdiction. In certain special assessment cases it has been held by the Supreme Court of the United States that there is no appeal and that no court has jurisdiction to reverse or modify the conclusions arrived at by the commissioner.

So this is all just a hullabaloo about nothing. As I have stated before, and wish to repeat, the only thing that striking down this appropriation could accomplish would be to deny the thousands of citizens throughout the United States, who are entitled to refunds, the opportunity of having the money paid to them promptly when it is found due.

Mr. COLE of Iowa. Will the gentleman yield?

Mr. WOOD. I yield.

Mr. COLE of Iowa. All of these settlements have not been in favor of the claimants, have they?

Mr. WOOD. No.

Mr. COLE of Iowa. I wish the gentleman would give us some figures on that.

Mr. WOOD. I can not give the gentleman the proportion that has been either affirmed or denied, but I will say to the Members of this House that for every dollar of refund we are making we are collecting more than four times that amount in back taxes; so that the amount collected on these back taxes, to which the Government is entitled, exceeds the amount of refunds made down to this time; in other words, the amount of the refunds since 1917 is $975,000,000 as compared with over $4,000,000,000 collected from back taxes. The amount of taxes refunded is about 2.5 per cent of the whole amount collected during this period.

If this were a claim where $100 was involved, and the same principle was involved, would anybody raise any question about it? If that is so, why should we differentiate between this corporation—and it is a corporation—and an individual? Why should we differentiate because the amount is large or whether it is small, if we have confidence in the gentlemen whose duty it is to make the computations and arrive at the amount that should be repaid?

Investigations and audits are constantly in process, and as overpayments or underpayments of tax are discovered it is essential that the correction be made as promptly and honorably as possible in order that the taxpayer shall pay to the Government that which he owes or that the Government may pay as promptly as possible to the taxpayer that which has been erroneously or illegally taken from him. During all this time when refunds of $975,000,000 have been made, not one objection has ever come from anybody on this floor or from the Joint Tax Committee or anywhere else.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. LAGUARDIA. There is no particular case before us for consideration under the bill. It is just a deficiency appropriation to pay refund of taxes generally, and we have no particular case before us to decide.

Mr. WOOD. Absolutely not, and we can not have that. It is simply setting up a straw man and tearing it down, and, as I said at the outset of my remarks, I can not for the life of me understand why the gentleman from Texas [Mr. GARNER] has worked himself up to such a pitch as he has done in trying to present his ideas with reference to this case.

Mr. GARNER of Texas. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. GARNER of Texas. Would the gentleman be willing to accept an amendment to the $75,000,000 appropriation, a limitation to the effect that none of this money shall be used to pay claims in excess of $75,000 until the joint committee has had an opportunity to investigate the claims that are referred to it? That would take care of everybody under $75,000.

Mr. WOOD. That is just exactly what you have now.

Mr. GARNER of Texas. You will get a chance to vote on that. You are talking about these little fellows that are to be deprived of their money. This would deprive nobody of any money who has a claim that is not over $75,000 until the joint committee can make an investigation.

Mr. CRAMTON. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. CRAMTON. The gentleman from Texas is a very powerful member of the joint committee; does he think or has the House any reason to think that the record of accomplishment of that joint committee up to date is such as to warrant our telling a great many people they must wait for their money pending some investigation that may not be made?

Mr. GARNER of Texas. No; I said when I had the floor that I agreed with my friend from Indiana that the committee is not worth a darn the way it is working now, but I am hoping to get some improvement and this limitation will give an improvement.

Mr. WOOD. I can not see how your proposal would bring about any improvement. It is not different from what you have already in the law. The gentleman is a member of that joint committee. By reason of his expert knowledge, his seniority, and the respect everybody has for him, I wonder how long it would take the gentleman to examine into the United States Steel Corporation case or the American Tobacco Co. case or the Insurance Co. cases. The gentleman would and could not do it. The gentleman would tell them all to take the taxes and go plumb to; that he had enough to do to attend to his own legislative business.

Here is one of the great problems we have, and I want to call your attention especially to this. Under this tax-refund reporting section of the 1928 revenue act we are getting the Congress, as a legislative body, mixed up with the executive departments of this Government in executive duties; and it is a bad practice and one that we ought to get away from. The Congress of the United States should have nothing to do with the execution of the laws of the United States. When we have passed the law we have done our duty, and it ought to be up to the other branch to execute it; because, whenever you involve the Congress of the United States as a partner in the execution of the law, then you are treading upon very dangerous ground, and you are undermining the very foundation upon which the Government was originated. You are inviting, if you please, all sorts of dissension—political and otherwise.

Mr. GARNER of Texas. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. GARNER of Texas. Does the gentleman take the position that Congress ought never to make an investigation of an executive branch of the Government under any conditions?

Mr. WOOD. No; not at all.

Mr. GARNER of Texas. How can you get your information in any other way? You have got to make an investigation to ascertain whether the laws are being properly executed.

Mr. WOOD. That is quite a different thing. Making an inquiry to see whether the laws are being properly executed as compared with our being a part of the execution of the laws is quite different. That is just exactly what I am complaining about. It is our duty, if we find the laws passed by the Congress are not being properly executed, to inquire into the facts and find out the facts and to provide or to suggest a remedy.

I believe the gentleman, upon reflection, will agree with me that the Congress of the United States ought to keep aloof from the executive departments.

There ought to be just as wide a divergence there as there is between any encroachment of the legislative upon the executive or the executive upon the judicial. If we will hew to that line we will save ourselves a great deal of trouble and save the American people a great deal of woe.

Here is another thing I want to call the attention of the House to in connection with this case.

When once the Commissioner of Internal Revenue has determined in some of these cases that a refund is due, then if the commissioner does not proceed to remand it, the taxpayer can bring a suit to recover in the courts, but he can only recover the amount that the commissioner has found due him.

Now, maybe that is not right. It may be there ought to be a more liberal right given him. If it should be, this is the agency that should give it to him, and if a better way can be found than that which has been practiced since the adoption of this revenue law down to this goodly hour for ascertaining what is right with reference to invested capital, what is right with reference to combinations of principals and subsidiaries, it is up to the Congress of the United States to provide it. If any good is going to come out of this discussion, it will be by awakening the conscience of the responsible parties and bringing about an inquiry into the facts as to whether or not we have provided the proper machinery for the enforcement of this law.

Everybody knows that for the first four or five years it was impossible to find any two auditors that would come to the same conclusion upon the same given set of facts even with reference to small individual returns. There was this confusion with respect to the administration of the law.

By reason of this long practice, by reason of the expertness of those employed in the Treasury Department, and by reason of the experts that these large corporations and large business houses have had in expert men to make out their returns and study these laws, they have simplified it so that it is not half the job to-day that it was 10 years ago. There is yet room for improvement. In my opinion they could simplify the tax-return sheet so that almost any man with average intelligence could make out his own return. I daresay that there is not one-tenth of the Members of this House who could make out a tax return.

Now, criticism has been made against the Appropriations Committee that it was the duty of that committee to inquire into these refunds. Why, gentlemen, would they have us bring up cartloads and truckloads of these manuscripts and set somebody that we had confidence in to delve into those things to see whether a proper conclusion had been reached? It would take more time than all of the other business of the Appropriations Committee, and you would not have any confidence in us after you had got our results for the reason that there would not be sufficient time or information to make up the reports or come to sound conclusions.

Gentlemen, the Steel Corporation has been alive to its own interests and properly so, and has adopted this policy—that whenever an assessment was made against them by the Government they paid it. They have done so because if they did not interest would run against them. By paying it the Government has to pay this interest. That is the reason why you have $11,000,000 interest which the Government has to pay. Mr. Bond testified before our committee, and Mr. HAWLEY has made the statement before you, that in his opinion it is the best possible settlement that could have been made. It not only settles everything for 1917 but it settles the possibility of a lawsuit involving $101,000,000 for principal and $60,000,000 for interest. And yet criticism is made by reason of the fact that they bargain across the table.

Mr. Bond has described the manner in which these settlements are made. They are not compromises in the sense that a compromise is made, but when the facts are so close and there is a reasonable ground for dispute as to who is right and who is wrong, like business men, they settle and try to obviate the possibility of a lawsuit. Under the law, it is the duty to resolve every doubt in favor of the taxpayer.

Mr. LOZIER. Will the gentleman yield?

Mr. WOOD. Yes.

Mr. LOZIER. The trouble comes in the application of the law to the disputed facts when the settlement is made in the manner these settlements are made. No formula or rule has definitely or legally been established for the future guidance of the Treasury. Does not public policy demand that the matter be submitted to the Supreme Court for final arbitrament to the end that a definite formula shall be established to govern the cases?

Mr. WOOD. Here is the trouble. There are so many things entering into the cases. They tell me that they are as different as it is possible to conceive. This Congress has been trying since the beginning of this scheme of taxation to legislate some plan, some simplification, and we have not accomplished it.

After all the men charged with this duty who have acquainted themselves with the facts and then tried to apply the law as they understand it, I expect come as nearly to arriving at a proper conclusion as any court in the United States. If we have the right kind of auditors, experts, lawyers, and engineers, if we have honest men handling these cases, the Government is not going to be cheated out of much.

Mr. MOORE of Virginia. It has been brought out here that there is a good deal of delay in passing on these cases. With the United States Steel Corporation the delay has been so great that there is included here $11,000,000 for interest. Could not that delay be very much diminished if the force in the Treasury Department should be amplified?

Mr. WOOD. Yes; we asked Mr. Bond that question, and he says that this case has been expedited as much as it possibly could be. They picked out the best auditors, the best engineers, the best experts, and told them to stick to the business, and they have done nothing else.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

The Clerk read as follows:

Be it enacted, etc., That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1929, and prior fiscal years, to provide urgent supplemental appropriations for the fiscal year ending June 30, 1929, and for other purposes, namely.

Mr. ANTHONY. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. LEHLBACH, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 15848, making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1929, and had come to no resolution thereon.

SPEECH OF HON. JOHN Q. TILSON

Mr. HAWLEY. Mr. Speaker, I ask unanimous consent that I may have printed in the RECORD the speech of the Hon. JOHN Q. TILSON, the majority leader of the House of Representatives, made before the Connecticut State Chamber of Commerce at Hartford, Conn., on December 27, 1928.

The SPEAKER. The gentleman from Oregon asks unanimous consent to extend his remarks in the RECORD by printing therein an address delivered by the gentleman from Connecticut [Mr. TILSON]. Is there objection?

There was no objection.

Mr. HAWLEY. Mr. Speaker, under leave to extend my remarks in the RECORD I include the following speech of Hon. JOHN Q. TILSON, majority leader of the House of Representatives, before the Connecticut State Chamber of Commerce at Hartford, Conn., December 27, 1928:

TARIFF REVISION

Mr. TILSON. I have consented to come here and speak to the manufacturers and other business men of Connecticut on this occasion because I believe that thereby I may be able to help, and it is with this purpose alone in view that I have come to you.

You have seen something in the papers in regard to a probable revision of the tariff at an extra session of Congress to be held either immediately or some time after the coming of the new administration. In order that you may the better understand the present situation I think it would be well for me to spend a few minutes in giving you something of the background and genesis of the agitation for tariff revision. You will recall that during the last session of the present Congress, when the farm-relief question was very acute, a resolution was introduced by Senator MCMASTER, of South Dakota, in effect calling for an immediate drastic, downward revision of what the resolution characterized as the excessive tariff duties. After considerable discussion this resolution was passed in the Senate by something like a two-thirds vote. The Democrats voted for it almost, if not quite, solidly, as did a number of other Senators including those posing as special friends of the farmer.

The McMaster resolution having passed the Senate came over to the House. It was then only a few weeks before the dates set for the two national conventions, and it was perfectly obvious that no general revision of the tariff could be made prior to the conventions or in fact prior to the general election in November, and that if it were attempted it would simply mean a session of Congress largely

devoted to partisan politics lasting right up to the election. Our good Democratic friends at any rate and doubtless some of the others intended by the move, and very closely too, to embarrass the Republicans by precipitating a general tariff revision to be carried out simultaneously with the presidential campaign. A number of the Republican friends of the farmer in the House, some of them in a spirit of sheer desperation, were ready to grasp at any straw that gave the slightest hope of relieving the situation and so were inclined to vote to the resolution. Finally by the narrow margin of eight votes, as I remember, the resolution was in effect laid on the table, thus removing for the time being the menace of undertaking a revision of the tariff under instructions from both Houses of Congress to revise it downward.

I have cited thus briefly the history of the McMaster resolution in order to show that there was at that time some sentiment for tariff revision among the farmers of the West, or at any rate among those purporting to represent them, that was not altogether friendly to protection as a national policy. While the discussion was going on it became apparent that there were insistent demands for tariff revision coming from other parts of the country and from industries other than farming. The result was, and I am violating no pledge of secrecy in saying so now, that a sort of understanding grew up at that time that in case the immediate revision was deferred until a more opportune occasion, an early general revision, including both agriculture and other industries, should be undertaken. No pledge of this sort was, of course, made, for no one had the right or the authority to make such a pledge, but the feeling existed that this was what should be done and that feeling has grown.

Tariff revision was referred to in the Republican platform adopted at Kansas City where it says, "We reaffirm our belief in the protective tariff as a fundamental and essential principle of the economic life of this Nation. While certain provisions of the present law require revision in the light of changes in the world competitive situation since its enactment, the record of the United States since 1922 clearly shows that the fundamental protective principle of the law has been fully justified."

During the campaign the subject was referred to very often, so that it may well be said that the party that was successful at the polls won out with the widespread understanding that a general revision of the tariff should be undertaken. Fortunately, the party platform and the campaign waged upon the platform, coupled with the sweeping victory, all made it clear that what was really wanted was a revision along protective lines. It was often stated during the campaign that the tariff policy of the Republican Party was, and is, to give adequate, necessary protection to every legitimate industry.

In connection with tariff revision I should mention the subject of farm-relief legislation, for the two have been closely associated throughout the discussion of the farm-relief question, it being contended, and I believe rightly, that a proper adjustment of tariff duties on many farm products would be most helpful to that industry. During the campaign farm-relief legislation was being urged from many quarters and Mr. Hoover in his campaign utterances tentatively promised that if satisfactory farm-relief legislation were not enacted before he came into office, he would call Congress into extra session for the purpose of considering the general subject. I do not regard it as probable that satisfactory farm legislation will be enacted during the present session of Congress, and this largely because those who have been most insistent upon immediate farm relief have taken the attitude that they prefer to wait until Mr. Hoover actually becomes President, or as some have expressed it, they would prefer to take their chances of favorable legislation from Hoover rather than from Coolidge. Whether or not they are correct in this time may tell. I do know, however, that President Coolidge has been and is most desirious of seeing proper farm-relief legislation enacted, and I am sure would be glad to approve a sound bill; but as I have said, there is little likelihood of such legislation now. It is, therefore, in my judgment, most probable that Mr. Hoover will redeem the campaign pledge of calling Congress together in extra session to consider the entire question of farm relief, which it is conceded includes tariff revision.

Any satisfactory revision of our tariff laws must cover the entire field because many of the items are interrelated and the rates more or less interdependent. Therefore it would be impracticable to select a few items, or even a few of the schedules, and revise these without at the same time considering all the others so as to be sure that the rates are not thrown out of balance. The revision at the present time, however, need not be a long drawn out or so difficult a task as it has been in the past because the conditions are much more favorable than is usually the case.

Ordinarily, our tariff bills have been written alternately by the party favoring protection and the party professing adherence to a tariff for revenue only. Usually, when the protection party comes into power it is necessary to prepare a tariff bill along entirely different lines to supplant a law written on a tariff-for-revenue-only basis. The reverse of this is true when the tariff-for-revenue-only party comes into power. In the present instance a protective tariff law is on the statute books which, on the whole, has operated quite successfully. The main structure of the present law need not be changed, but it has been seven years since that law was enacted and conditions in many industries have changed, necessitating corresponding changes in the law. Our present task is simply to make the changes necessary to fit the changed conditions, leaving the basic structure of the law as it now stands.

In order to be ready for an early revision of the tariff in case an early extra session is called, the House Committee on Ways and Means of the present Congress is to begin on January 7 hearings preparatory to the early general revision of the tariff. These hearings do not bind the incoming President to call an extra session and it is possible, though I do not regard it as probable, that such hearings might demonstrate that no tariff revision is needed at this time. Believing, however, that the extra session will be called and that tariff revision will be had, I wish to say a few words as to what I think the attitude of the country should be toward such revision, and especially what the attitude of the manufacturers of this part of the country should be toward it.

I speak as a Republican and a protectionist. I could not speak otherwise and speak truly, so that any old-fashioned Democrats present whose views do not fully coincide with mine on this subject will have to make the necessary allowance, taking into the account my viewpoint, which has been frankly stated. I believe that as conditions now are in our own country and in foreign countries, an American system of protective-tariff duties is most necessary, or, at any rate, highly desirable. I believe that if the country were deprived of such a system we should be in for a period of depression the end of which no one could possibly foresee. What should be done, then, that a tariff bill may be written carrying rates that are fair, adequate, and yet only such as may be necessary for the proper protection of the countless number and variety of articles produced by our immensely varied industries? In the first place, I think that we should take the position that protection is a national policy and that it should apply with equal force to every industry in the country that can properly bring itself within the protective-tariff principle. We in New England should favor proper protection for farming, mining, and other industries, just as we ask and need it for purely manufacturing industries. A policy of protection must be based upon principles broad enough to cover the Nation or it can not stand.

Our manufacturers can help very materially in the preparation of tariff schedules that will stand the test of time and thorough investigation. All that is necessary is that Congress shall be furnished with the material facts so that the tariff rates proposed and adopted may be based upon such facts and upon as thorough knowledge as possible of the conditions surrounding each particular industry, both in this country and abroad. It is necessary that these facts be carefully prepared and that they be properly presented in a way to inspire the confidence of the committees of Congress in charge of the revision, the Members of both Houses of Congress, and the country generally. For, after all, the tariff law, like any other law, if it is to command respect, should be backed up by sound public opinion, and this public opinion in order to endure must be based securely upon the facts.

In presenting to Congress the needs of the several industries great care should be exercised that the case be neither overstated nor understated. If understated, and rates are based upon such understatement, then the protection given will not be sufficient and the result will be unsatisfactory, as was the case in a few instances in the revision of 1921–22. On the other hand, if the case be overstated, the close and critical scrutiny which is sure to be given every item by both friends and foes of the tariff, will surely reveal the exaggeration of the need for protection, and the error will recoil upon the heads of those giving the inaccurate information to the injury of the industry that has been thus misrepresented.

In the revision of 1921–22 I served as chairman of the subcommittee on both the metal schedule and the sundries schedule. Many manufacturers, importers, and others interested in the revision came before my subcommittee. I then strove to impress them all with the fact that what the committee needed was accurate information as to the actual condition of the particular industry and as thorough knowledge as possible of the facts upon which the claim of need for protection is predicated. Some of the manufacturers at that time underestimated their need and some of these have been penalized for their moderation. Some, a very few, I am glad to say, overstated their case as to the need for protection, and I am glad to say that they, in practically every instance of overstatement, were discovered in time to prevent erroneous action, but if some of these latter ones suffered on account of their exaggerated claims, they had no one to blame but themselves.

If the tariff is revised during the Seventy-first Congress, it will be the first time in many years that a revision has taken place without the presence of a Connecticut man on either the Ways and Means Committee of the House or the Finance Committee of the Senate, the two committees of Congress having charge of tariff matters. In the last revision I represented Connecticut on the committee in the House while Senator McLEAN represented our State in the Senate.

Four years ago I was promoted to the leadership of the House, and now Senator McLEAN, of his own volition, is leaving the Senate. I wish to assure you, however, that every possible effort will be made to

properly safeguard the interests of Connecticut in connection with the tariff bill. As floor leader of the House I am permitted, through conference and otherwise, to exercise my persuasive powers with the committees of the House as a sort of member ex officio of the committee. In view of the great interests of our State and of my familiarity with the subject, owing to the active part taken by me in the last revision, I shall avail myself of the privilege of conferring with the Ways and Means Committee as often as possible when matters directly affecting Connecticut are being considered. I shall, also, through my constant touch with the chairman of the Ways and Means Committee, try to keep track of the work of the committee as nearly as possible as though I were still a member of it.

I appeal to the manufacturers and other business men of Connecticut, who are particularly interested in the prospective revision of the tariff and are in position to do so, to give the kind of help that I have already indicated. In any event I appeal to you to consider the entire tariff question on a broad-minded, country-wide basis, remembering, as I stated at the outset, that this is a national policy, that we are but a part of a great country, bound together by strong common interests, and that our interests in the last analysis and in the long run are the same as the interests of all other parts of the country. I believe that New England, and especially Connecticut, will take this broad-minded, businesslike, statesmanlike view of the subject.

INTERIOR DEPARTMENT APPROPRIATION BILL

Mr. CRAMTON. Mr. Speaker, I ask unanimous consent to file before 12 o'clock to-night for printing under the rules the conference report upon the bill (H. R. 15089) making appropriations for the Interior Department.

The SPEAKER. The gentleman from Michigan asks unanimous consent that he may have until 12 o'clock to-night to file a conference report upon the Interior Department appropriation bill. Is there objection?

There was no objection.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 3127. An act to amend section 217, as amended, of the act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909.

ADJOURNMENT

Mr. ANTHONY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 4 o'clock and 18 minutes p. m.) the House adjourned until Monday, January 7, 1929, at 12 o'clock noon.

COMMITTEE HEARINGS

Mr. TILSON submitted the following tentative list of committee hearings scheduled for Monday, January 7, 1929, as reported to the floor leader by clerks of the several committees:

COMMITTEE ON APPROPRIATIONS

(10.30 a. m.)

Navy Department appropriation bill.
Independent offices appropriation bill.
District of Columbia appropriation bill.

COMMITTEE ON FOREIGN AFFAIRS

(10.30 a. m.)

Requesting the President to propose the calling of an international conference for the simplification of the calendar, or to accept on behalf of the United States, an invitation to participate in such a conference (H. J. Res. 334).

COMMITTEE ON NAVAL AFFAIRS

(10.30 a. m.)

To hear private bills.

COMMITTEE ON WAYS AND MEANS

(10 a. m. and 2 p. m.)

Tariff hearings as follows:

SCHEDULES

Chemicals, oils, and paints, January 7, 8, 9.
Earths, earthenware, and glassware, January 10, 11.
Metals and manufactures of, January 14, 15, 16.
Wood and manufactures of, January 17, 18.
Sugar, molasses, and manufactures of, January 21, 22.
Tobacco and manufactures of, January 23.
Agricultural products and provisions, January 24, 25, 28.
Spirits, wines, and other beverages, January 29.
Cotton manufactures, January 30, 31, February 1.
Flax, hemp, jute, and manufactures of, February 4, 5.
Wool and manufactures of, February 6, 7, 8.
Silk and silk goods, February 11, 12.
Papers and books, February 13, 14.
Sundries, February 15, 18, 19.
Free list, February 20, 21, 22.
Administrative and miscellaneous, February 25.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

725. A communication from the President of the United States, transmitting supplemental estimate of appropriation for the Federal Board for Vocational Education for the fiscal year ending June 30, 1930, amounting to $13,400 (H. Doc. No. 500); to the Committee on Appropriations and ordered to be printed.

726. A communication from the President of the United States, transmitting supplemental estimate of appropriation amounting to $7,130,000 for the fiscal year 1929 to enable the Porto Rican Hurricane Relief Commission to extend relief to the people of Porto Rico (H. Doc. No. 501); to the Committee on Appropriations and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. BOWMAN: Committee on the District of Columbia. S. 3936. An act to regulate the practice of the healing art to protect the public health in the District of Columbia; without amendment (Rept. No. 2009). Referred to the House Calendar.

Mr. FENN: Committee on the Census. H. R. 11725. A bill for the apportionment of Representatives in Congress; with amendment (Rept. No. 2010). Referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. UNDERHILL: Committee on Claims. H. R. 3044. A bill for the relief of Leon Freidman; without amendment (Rept. No. 2011). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 3047. A bill for the relief of J. Edward Burke; without amendment (Rept. No. 2012). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 7173. A bill granting compensation to the daughters of James P. Gallivan; with amendment (Rept. No. 2013). Referred to the Committee of the Whole House.

Mr. GUYER: Committee on Claims. H. R. 11698. A bill conferring jurisdiction upon certain courts of the United States to hear and determine the claim by the owner of the steamship *W. I. Radcliffe* against the United States, and for other purposes; with amendment (Rept. No. 2014). Referred to the Committee of the Whole House.

Mr. GUYER: Committee on Claims. H. R. 11699. A bill conferring jurisdiction upon the United States Court for the Southern District of New York to hear and determine the claim of the owner of the French auxiliary bark *Quevilly* against the United States, and for other purposes; with amendment (Rept. No. 2015). Referred to the Committee of the Whole House.

Mr. HUDSPETH: Committee on Claims. H. R. 12502. A bill for the relief of John H. and Avie D. Mathison, parents of Charles W. Mathison, deseased; with amendment (Rept. No. 2016). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 13521. A bill for the relief of Minnie A. Travers; with amendment (Rept. No. 2017). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 13632. A bill for the relief of Ruth B. Lincoln; with amendment (Rept. No. 2018). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. H. R. 13888. A bill for the relief of Charles McCoombe; with amendment (Rept. No. 2019). Referred to the Committee of the Whole House.

Mr. BOX. Committee on Claims. S. 1364. An act for the relief of R. Wilson Selby; without amendment (Rept. No. 2020). Referred to the Committee of the Whole House.

Mr. BOX. Committee on Claims. S. 1500. An act for the relief of James J. Welsh, Edward C. F. Webb, Francis A. Meyer, Mary S. Bennett, William McMullin, jr., Margaret McMullin, R. B. Carpenter, McCoy Yearsley, Edward Yearsley, George H. Bennett, jr., Stewart L. Beck, William P. McConnell, Elizabeth J. Morrow, William B. Jester, Josephine A. Haggan, James H. S. Gam, Herbert Nicoll, Shallcross Bros., E. C. Buckson, Wilbert Rawley, R. Rickards, jr., Dredging Co.; without amendment (Rept. No. 2021). Referred to the Committee of the Whole House.

Mr. UNDERHILL: Committee on Claims. S. 1547. An act for the relief of Johns-Manville Corporation; without amendment (Rept. No. 2022). Referred to the Committee of the Whole House.

Mr. STEELE: Committee on Claims. S. 2989. An act for the relief of John B. Moss; without amendment (Rept. No. 2023). Referred to the Committee of the Whole House.

Mr. SCHAFER: Committee on Claims. S. 3741. An act for the relief of S. L. Roberts; without amendment (Rept. No. 2024). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, the Committee on Invalid Pensions was discharged from the consideration of the bill (H. R. 15750) granting a pension to Clara E. Moor, and the same was referred to the Committee on Pensions.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ALLEN: A bill (H. R. 15916) to provide for the construction of a new bridge across the south branch of the Mississippi River from Sixteenth Street, Moline, Ill., to the east end of the island occupied by the Rock Island Arsenal; to the Committee on Interstate and Foreign Commerce.

By Mr. ARNOLD: A bill (H. R. 15917) to extend the times for commencing and completing the construction of a bridge across the Wabash River at Mount Carmel, Ill.; to the Committee on Interstate and Foreign Commerce.

By Mr. DOUGLAS of Arizona: A bill (H. R. 15918) to amend the act entitled "An act to authorize credit upon the construction charges of certain water-right applicants and purchasers on the Yuma and Yuma Mesa auxiliary projects, and for other purposes"; to the Committee on Irrigation and Reclamation.

Also, a bill (H. R. 15919) to authorize the issuance of patent for lands containing copper, lead, zinc, or silver and their associated minerals, and for other purposes; to the Committee on the Public Lands.

By Mr. CRAIL: A bill (H. R. 15920) to amend the act of May 24, 1928, entitled "An act making eligible for retirement, under certain conditions, officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War"; to the Committee on World War Veterans' Legislation.

By Mr. LUCE: A bill (H. R. 15921) to authorize an appropriation to provide additional hospital, domiciliary, and outpatient dispensary facilities for persons entitled to hospitalization under the World War veterans' act, 1924, as amended, and for other purposes; to the Committee on World War Veterans' Legislation.

By Mr. CROWTHER: A bill (H. R. 15922) to provide for not less than 50 clear channels of radio communication; to the Committee on the Merchant Marine and Fisheries.

By Mr. MORIN: A bill (H. R. 15923) to authorize an appropriation for the construction of approaches, surroundings, and adjacent roadways to the Tomb of the Unknown Soldier, in the Arlington National Cemetery, Va.; to the Committee on Military Affairs.

By Mr. JOHNSON of South Dakota: A bill (H. R. 15924) to establish a department of veterans' affairs; to the Committee on Expenditures in the Executive Departments.

By Mr. SUTHERLAND: A bill (H. R. 15925) to facilitate work of the Department of Agriculture in the Territory of Alaska; to the Committee on Agriculture.

By Mr. CRAIL: A bill (H. R. 15926) to amend section 13 of the act of February 25, 1920, entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain"; to the Committee on the Public Lands.

By Mr. CELLER: Joint resolution (H. J. Res. 371) establishing a peace college; to the Committee on Foreign Affairs.

By Mr. GARNER of Texas: Joint resolution (H. J. Res. 372) increasing the authorization for appropriations for the International Water Commission, United States and Mexico; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BECK of Wisconsin: A bill (H. R. 15927) granting a pension to Inez L. Hoxsie; to the Committee on Invalid Pensions.

By Mr. BROWNING: A bill (H. R. 15928) granting a pension to Edward Eason; to the Committee on Pensions.

By Mr. BUCKBEE: A bill (H. R. 15929) granting a pension to Earnest J. Wolter; to the Committee on Pensions.

By Mr. CANNON: A bill (H. R. 15930) granting a pension to Sarah Coleman; to the Committee on Invalid Pensions.

By Mr. DAVENPORT: A bill (H. R. 15931) granting an increase of pension to Elizabeth Bowman; to the Committee on Invalid Pensions.

By Mr. DOUGLAS of Arizona: A bill (H. R. 15932) for the relief of Raymond W. Still; to the Committee on the Post Office and Post Roads.

By Mr. ENGLAND: A bill (H. R. 15933) granting an increase of pension to Florence S. Smith; to the Committee on Invalid Pensions.

By Mr. FENN: A bill (H. R. 15934) granting an increase of pension to Emily L. Ingram; to the Committee on Pensions.

By Mr. W. T. FITZGERALD: A bill (H. R. 15935) granting a pension to Irene Goetz; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15936) granting a pension to Robert Valentine; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15937) granting a pension to Pauline E. Geiser; to the Committee on Pensions.

Also, a bill (H. R. 15938) granting a pension to Emeline Wheelock; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15939) granting a pension to Virgil H. Effinger; to the Committee on Pensions.

By Mr. FREE: A bill (H. R. 15940) for the relief of Stewart M. Crosgrove; to the Committee on Military Affairs.

By Mr. GUYER: A bill (H. R. 19541) granting an increase of pension to Virginia F. Huddleston; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15942) for the relief of the University of Kansas; to the Committee on Claims.

Also, a bill (H. R. 15943) granting a pension to John Davis; to the Committee on Pensions.

Also, a bill (H. R. 15944) granting an increase of pension to Louesa M. Cochran; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15945) granting a pension to Kate Bartholomew; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15946) granting a pension to Frances Lutton; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15947) granting a pension to Effie R. Brooks; to the Committee on Invalid Pensions.

By Mr. GOLDSBOROUGH: A bill (H. R. 15948) to provide for an examination and survey for a waterway across Kent Island, Queen Annes County, Md.; to the Committee on Rivers and Harbors.

Also, a bill (H. R. 15949) to provide for the examination and survey of Walnut Harbor, Talbot County, Md.; to the Committee on Rivers and Harbors.

Also, a bill (H. R. 15950) to provide for the examination and survey of Knapps Narrows, Talbot County, Md.; to the Committee on Rivers and Harbors.

By Mr. JOHNSON of Washington: A bill (H. R. 15951) granting an increase of pension to Eva R. Hunt; to the Committee on Invalid Pensions.

By Mr. JONES: A bill (H. R. 15952) relating to the eligibility of Jackson A. Findley for appointment as a cadet to the United States Military Academy; to the Committee on Military Affairs.

By Mrs. KAHN: A bill (H. R. 15953) to renew and extend certain letters patent to Rosa Schoenholz; to the Committee on Patents.

By Mr. KING: A bill (H. R. 15954) granting a pension to Mrs. James Newton Ramsey; to the Committee on Pensions.

By Mrs. LANGLEY: A bill (H. R. 15955) granting a pension to Clement Shepherd; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15956) granting a pension to Edward Chaney; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15957) granting a pension to James Tucker; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15958) granting a pension to Arthur McDaniel; to the Committee on Invalid Pensions.

Also, a bill (H. R. 15959) granting a pension to Lizzie Gullett; to the Committee on Pensions.

By Mr. MAJOR of Missouri: A bill (H. R. 15960) granting a pension to Eliza Ellen Scott; to the Committee on Invalid Pensions.

By Mr. MURPHY: A bill (H. R. 15961) granting an increase of pension to Avarilla C. Culler; to the Committee on Invalid Pensions.

By Mr. NELSON of Maine: A bill (H. R. 15962) granting an increase of pension to Cornelia Hunton; to the Committee on Invalid Pensions.

By Mr. ROBINSON of Iowa: A bill (H. R. 15963) granting an increase of pension to Mary J. Doyle; to the Committee on Invalid Pensions.

By Mr. ROWBOTTOM: A bill (H. R. 15964) granting an increase of pension to Martha J. Roberts; to the Committee on Invalid Pensions.

By Mr. SWANK: A bill (H. R. 15965) granting a pension to Leo R. Snow; to the Committee on Pensions.

By Mr. VESTAL: A bill (H. R. 15966) granting an increase of pension to John G. Heck; to the Committee on Pensions.

By Mr. ZIHLMAN: A bill (H. R. 15967) granting an increase of pension to Ann M. Kisner; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

8156. By Mr. CHALMERS: Petition of citizens of the State of Ohio, desiring to have our governmental money system controlled by the Government only; to the Committee on Banking and Currency.

8157. By Mr. GARBER: Petition of Manufacturers' Conference on Prison Industries, urging passage of House bill 7729, the convict labor bill; to the Committee on Labor.

8158. Also, petition of the American Association Creamery Butter Manufacturers, the American Dairy Federation, and the National Dairy Union, in support of the Haugen oleomargarine law amendment (H. R. 10958); to the Committee on Agriculture.

8159. Also, petition of the National Lumber Manufacturers Association, requesting that the scope of any legislative enactment which will, under suitable safeguards, permit control of production in the coal and oil industries, be extended to include also forest products; to the Committee on Agriculture.

8160. By Mr. O'CONNELL: Petition of the Merchants Association of New York, favoring additional Federal judges for the city of New York; to the Committee on the Judiciary.

8161. Also, petition of the Chamber of Commerce of the State of New York, favoring the widening of the channel in the vicinity of the quarantine anchorage of Stapleton, Staten Island, N. Y.; to the Committee on Rivers and Harbors.

8162. By Mr. SWICK: Petition of Victory District, No. 14, Loyal Orange Lodge, Lawrence County, Pa., urging the extension of quota restrictions to immigration from Mexico and Canada, and more stringent enforcement of existing immigration laws; to the Committee on Immigration and Naturalization.

SENATE

MONDAY, *January 7, 1929*

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

O Shepherd of Israel, who dost neither slumber nor sleep, we are the people of Thy pasture and the sheep of Thy hand. Make us to love Thy voice and answer to the name by which Thou callest us; so shall none be able to pluck us out of Thy hand. Beside the still waters, through pastures green, and in the valley where deep shadows lie, be Thou our strength and shield; and do Thou shepherd us beyond the plains of peril to the eternal fold where we may lie down in peace and take our rest, for it is Thou only that makest us dwell in safety. Grant this for the sake of Him who is the Lamb of God, Jesus Christ our Lord. Amen.

The Chief Clerk proceeded to read the Journal of the proceedings of Saturday last, when, on request of Mr. CURTIS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Haltigan, one of its clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 3127) to amend section 217, as amended, of the act entitled "An act to codify, revise, and amend the penal laws of the United States, approved March 4, 1909," and it was signed by the Vice President.

CALL OF THE ROLL

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Brookhart	Couzens	Fess
Barkley	Broussard	Curtis	Fletcher
Bayard	Bruce	Dale	Frazier
Bingham	Burton	Deneen	George
Blaine	Capper	Dill	Gerry
Blease	Caraway	Edge	Gillett
Borah	Copeland	Edwards	Glass
Glenn	McKellar	Ransdell	Swanson
Goff	McLean	Reed, Mo.	Thomas, Idaho
Gould	McMaster	Reed, Pa.	Thomas, Okla.
Greene	McNary	Robinson, Ark.	Trammell
Hale	Mayfield	Robinson, Ind.	Tydings
Harris	Metcalf	Sackett	Vandenberg
Hastings	Moses	Schall	Wagner
Hayden	Neely	Sheppard	Walsh, Mass.
Heflin	Norbeck	Shipstead	Walsh, Mont.
Johnson	Norris	Shortridge	Warren
Jones	Nye	Simmons	Waterman
Kendrick	Oddie	Smoot	Watson
Keyes	Overman	Steck	Wheeler
King	Phipps	Steiwer	
La Follette	Pine	Stephens	

Mr. HEFLIN. My colleague the junior Senator from Alabama [Mr. BLACK] is absent on account of illness. I ask that this announcement may stand for the day.

Mr. MCKELLAR. I desire to announce that my colleague the junior Senator from Tennessee [Mr. TYSON] is unavoidably detained from the Senate on account of a death in his family. I ask that this announcement may stand for the day.

Mr. NORRIS. My colleague the junior Senator from Nebraska [Mr. HOWELL] is detained from the Senate by illness. I will let this announcement stand for the day.

The PRESIDING OFFICER (Mr. ODDIE in the chair). Eighty-six Senators having answered to their names, a quorum is present.

CREDENTIALS

The PRESIDING OFFICER (Mr. ODDIE in the chair) laid before the Senate the credentials of FREDERICK HALE, chosen a Senator from the State of Maine for the term commencing March 4, 1929, which were read and ordered to be placed on file, as follows:

STATE OF MAINE.

To all who shall see these presents, greeting:

Know ye that FREDERICK HALE, of Portland, in the county of Cumberland, on the 10th day of September, A. D. 1928, was chosen by the electors of this State a United States Senator to represent the State of Maine in the United States Senate for the term of six years beginning on the 4th day of March, 1929.

In testimony whereof I have caused the seal of State to be hereunto affixed.

Given under my hand at Augusta the 15th day of November, A. D. 1928, and in the one hundred and fifty-third year of the independence of the United States of America.

By the governor:

RALPH O. BREWSTER.

[SEAL.] EDGAR C. SMITH,
Secretary of State.

The PRESIDING OFFICER laid before the Senate the credentials of PARK TRAMMELL, chosen a Senator from the State of Florida for the term commencing March 4, 1929, which were read and ordered to be placed on file, as follows:

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that on the 6th day of November, 1928, PARK TRAMMELL was duly chosen by the qualified electors of the State of Florida a Senator from said State to represent said State in the Senate of the United States for the term of six years beginning on the 4th day of March, 1929.

Witness: His excellency our governor, John W. Martin, and our seal hereto affixed at Tallahasssee, this the 20th day of December, A. D. 1928.

JOHN W. MARTIN, *Governor.*

By the governor, attest:

[SEAL.] H. CLAY CRAWFORD,
Secretary of State.

Mr. METCALF presented the credentials of FELIX HEBERT, chosen a Senator from the State of Rhode Island for the term commencing March 4, 1929, which were read and ordered to be placed on file, as follows:

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that on the 6th day of November, 1928, FELIX HEBERT was duly chosen by the qualified electors of the State of Rhode Island and Providence Plantations a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 4th day of March, 1929.

Witness: His excellency our governor, Norman S. Case, and our seal hereto affixed at Providence this 21st day of December, A. D. 1928.

By the governor:

NORMAN S. CASE, *Governor.*

[SEAL.] ERNEST L. SPRAGUE,
Secretary of State.

AGRICULTURAL INSURANCE (S. DOC. NO. 190)

The PRESIDING OFFICER laid before the Senate a communication from the Secretary of Agriculture, reporting, in re-